GARY E. KLAUSNER (SBN 69077)
gek@lnbyb.com
JEFFREY S. KWANG (SBN 288239)
jsk@lnbyb.com
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Boulevard, Suite 1700
Los Angeles, California 90067
Telephone: (310) 229-1234

KEVIN D. RISING (SBN 211663)
kevin.rising@btlaw.com
RACHEL LERMAN (SBN 193080)
rachel.lerman@btlaw.com
JOEL R. MEYER (SBN 247620)
joel.meyer@btlaw.com
BARNES & THORNBURG LLP
2029 Century Park East, Suite 300
Los Angeles, California 90067
Telephone: (310) 284-3880

Attorneys for Strategic Global Management, Inc.; Kali P. Chaudhuri, M.D.; KPC Healthcare Holdings, Inc.; KPC Health Plan Holdings, Inc.; KPC Healthcare, Inc.; and KPC Global Management, LLC

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN 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

Case No. 2:20-CV-00613-DSF

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 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

1820151200312000000000007

☐ 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 Dialysis, LLC, Debtors and Debtors-in-Possession.	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
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 **SUPPLEMENTAL REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANTS' SPECIAL MOTION TO STRIKE PLAINTIFFS' COMPLAINT PURSUANT TO CAL. CIV. PROC. CODE § 425.16 AND MOTION TO DISMISS PLAINTIFFS' COMPLAINT [Fed. R. Civ. Proc. 12(b)(1) & 12(b)(6)]** Date: TBD Time: TBD Judge: Hon. Dale S. Fischer

Defendants Strategic Global Management, Inc., Kali P. Chaudhuri, M.D., KPC Healthcare Holdings, Inc., KPC Health Plan Holdings, Inc., KPC Healthcare, Inc., and KPC Global Management, LLC, (collectively, the "Defendants") hereby submit this Supplemental Request for Judicial Notice in support of their Special Motion to Strike Plaintiffs' Complaint Pursuant to Cal. Civ. Proc. Code § 425.16 and Motion to Dismiss Plaintiffs' Complaint Pursuant to Fed. Rule Civ. Proc. 12(b)(1) and 12(b)(6).

Pursuant to Federal Rule of Evidence 201[1], Defendants hereby request that this Court take judicial notice of the following documents:

Exhibit "V": *Transcript of Proceedings: Hearing Set Re [15] Strategic Global Management, Inc.'s Emergency Motion to Stay Adversary Proceeding; Hearing Re: [27] Official Committee of Unsecured Creditors' Emergency Motion to Intervene Re: Strategic Global Management, Inc.'s Emergency Motion to Stay Adversary Proceeding*, Bankruptcy Court Case No. 2:20-ap-01001-ER, Docket No. 33.

Exhibit "W": *Reply to Oppositions to "Strategic Global Management, Inc.'s . . . Motion to Stay Adversary Proceeding"*, Bankruptcy Court Case No. 2:20-ap-01001-ER, Docket No. 26.

Dated: March 11, 2020

Barnes & Thornburg LLP

By: */s/ Kevin D. Rising*
Kevin D. Rising
Counsel for Defendants

[1] The Court may take judicial notice of the records of any court of record of the United States or of any state of the United States. *See* Fed. R. Evid. 201; *see also United States v. Brugnara*, 856 F.3d 1198, 1209 (9th Cir. 2017) (finding that the Court may take judicial notice of its own records).

Exhibit V

Exhibit V

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

--oOo--

In Re:	) Case No. 2:18-bk-20151-ER
VERITY HEALTH SYSTEM OF CALIFORNIA, INC.,	) Chapter 11
Debtor.	) Los Angeles, California) Tuesday, February 11, 2020) 10:00 a.m.
VERITY HEALTH SYSTEM OF CALIFORNIA, INC.,	) Adv. No. 2:20-ap-01001-ER
Plaintiff,	
vs.	
STRATEGIC GLOBAL MANAGEMENT, INC.,	
Defendant.	

HEARING SET RE [15] STRATEGIC GLOBAL MANAGEMENT, INC.'S EMERGENCY MOTION TO STAY ADVERSARY PROCEEDING

HEARING RE: [27] OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EMERGENCY MOTION TO INTERVENE RE: STRATEGIC GLOBAL MANAGEMENT, INC.'S EMERGENCY MOTION TO STAY ADVERSARY PROCEEDING

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ERNEST ROBLES
UNITED STATES BANKRUPTCY JUDGE

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

APPEARANCES:

For the Debtors:	SAMUEL R. MAIZEL, ESQ. TANIA M. MOYRON, ESQ. NICHOLAS A. KOFFROTH, ESQ. Dentons US, LLP 601 South Figueroa Street Suite 2500 Los Angeles, California 90017 (213) 892-2910
	SONIA R. MARTIN, ESQ. Dentons US, LLP Spear Street Tower, 24th Floor San Francisco, California 94105 (415) 882-5000
	CLAUDE D. MONTGOMERY, ESQ. Dentons US, LLP 1221 Avenue of the Americas New York, New York 10020 (212) 768-6700
For the Official Creditors Committee:	MARK SHINDERMAN, ESQ. Milbank, Tweed, Hadley & McCloy, LLP 2029 Century Park East 33rd Floor Los Angeles, California 90067 (424) 386-4470
For Strategic Global Management, Inc.:	GARY E. KLAUSNER, ESQ. Levene, Neale, Bender, Yoo & Brill, LLP 10250 Constellation Boulevard Suite 1700 Los Angeles, California 90067 (310) 229-1234
	KEVIN D. RISING, ESQ. Barnes & Thornburg, LLP 2029 Century Park East Suite 300 Los Angeles, California 90067 (310) 284-3888

APPEARANCES: (cont'd.)

For US Bank, as Notes Trustee, 2017 Series:	CLARK T. WHITMORE, ESQ. Maslon 3300 Wells Fargo Center 90 South Seventh Street Minneapolis, Minnesota 55402 (612) 672-8335
For Berkeley Research Group, LLC:	JONATHAN EMERSON Berkeley Research Group, LLC 14 Pennsylvania Plaza New York, New York 10122 (212) 782-1405
For Reorg Research, Inc.:	RAMON M. NAGUIAT, ESQ. 4992 Partridge Circle La Palma, California 90623 (212) 588-8890
Court Recorder:	Maria Evangelista United States Bankruptcy Court Edward R. Roybal Federal Building 255 East Temple Street Los Angeles, California 90012
Transcriber:	Briggs Reporting Company, Inc. 2160 Fletcher Parkway Suite 209 El Cajon, California 92020 (310) 410-4151

LOS ANGELES, CALIFORNIA TUESDAY, FEBRUARY 11, 2020 10:00 AM

--oOo--

(Call to order of the Court.)

THE COURT: Items 17 and 18. This is Verity Health System of California. Let me take appearances by telephone first this morning.

Mr. Whitmore, I under you're on listen only.

Mr. Montgomery, can we have your appearance, please?

MR. MONTGOMERY (Telephonic): Your Honor, I had intended to listen only as well. Claude Montgomery of Dentons.

THE COURT: Very well. Thank you.

We have Mr. Emerson on listen only, and Mr. Naguiat on listen only.

Are there any persons on the telephone line that wish to be heard this morning? All right. Then we'll move, in court, may I have appearances, please?

MR. MAIZEL: Good morning, your Honor. Sam Maizel, Dentons US, LLP, on behalf of the Debtors. With me at counsel table are my partners, Tania Moyron, Sonia Martin and Kick Koffroth.

THE COURT: Thank you.

MR. KLAUSNER: Good morning, your Honor. Gary Klausner, Levene, Neale, Bender, Yoo and Brill. We're here

for the moving party, Strategic Management Global, Inc.

I'd like to introduce to the Court Kevin Rising, who's with Barnes and Thornburg, who's joining me today in argument, and who will be joining us in connection with the litigation before the Court.

THE COURT: Very well. Thank you.

MR. SHINDERMAN: Good morning, your Honor. Mark Shinderman of Milbank, on behalf of the Committee.

THE COURT: Thank you very much.

The Court did have an opportunity to review the papers and the response -- oppositions, and we have opportunity to issue a tentative ruling on this.

So, Mr. Klausner, if you have anything to add at this point.

MR. KLAUSNER: Thank you, your Honor. And with the Court's permission, Mr. Rising and I are going to divide up the presentation.

THE COURT: All right.

MR. KLAUSNER: So, this is the first time that I've had an opportunity to address the Court regarding any of these substantive issues regarding the asset purchase agreement since November 26.

So, I do -- will -- ultimately, I do need to go back in time a bit, but let me start with the divestiture rule. Let me just set the stage. This obviously is not a

rule that we've created, it's been in existence for 100 years.

And in this case, our appeals were filed before the complaint. So, the divestiture rule isn't something that we did after the -- that we triggered after the complaint was filed to try to avoid having to come to grips with the complaint. We've actually sought appellate review of this Court's order, and it was the Debtor who started litigation in the face of those appeals.

And it's important to understand what I think everybody agrees to as what the standard for application of divestiture, and what the Court has done, which we don't disagree with, is citing Griggs. And what Griggs says is that the notice of a filing appeal is an event of jurisdictional significance. It divests the district court, in this case, of course, the bankruptcy court, of its control.

And here's the key language, "over those aspects of the case," which we're talking about here would be the lawsuit, "involved in the appeal." So the standard that I don't --

THE COURT: Wait. "The case involved in the appeal."

MR. KLAUSNER: Right. That -- what --

THE COURT: Well, but the adversary is not

involved in the appeal.

MR. KLAUSNER: No, it's aspects of the case --

THE COURT: "Aspects." All right.

MR. KLAUSNER: -- would be involved in the appeal.

THE COURT: All right.

MR. KLAUSNER: So the issue is, what aspects, if any, of the lawsuit are involved in the appeal? That's the issue for purposes of divestiture. That's the standard. That's the test.

So, Verity's contention in its complaint in the case is that SGM breached the APA based on unnecessarily requiring a finding that Verity had satisfied all conditions to closing as of November 19. That is the lynchpin of its breach of contract case. That conditions to close had been satisfied. Verity has alleged in the complaint that it satisfied its conditions to closing as of November 19.

And importantly from the standpoint of the divestiture issue, Verity cited in paragraphs 83 and 90, and all throughout its complaint, but I do want to focus on those paragraphs, this Court's orders of November 14, November 18 and November 27, to support that claim. In other words, Verity has supported its contention that it satisfied all conditions to closing, which is an element necessary to establish breach by virtue of citing to this Court's orders.

Now --

THE COURT: That, in addition, these Court's -- this Court's comments at various points in the hearings. I understand that.

MR. KLAUSNER: So in paragraph 83, the complaint alleges:

> "APA section 1.3 obligated SGM to close the sale promptly but no later than 10 business days following satisfaction of all conditions."

That's an allegation of the complaint. Paragraph 83 goes on to state:

> "On November 18, 2019, the bankruptcy court entered an order..."

The 8.6 order:

> "...and related memorandum finding that the Debtors have complied with their obligation under the APA to obtain a final, non-appealable supplemental sale order."

Consequently, SGM is now obligated to promptly close the SGM sale, provided that all other conditions to closing have been satisfied.

In paragraph 90 of the complaint, Verity alleges:

> "On November 27 the bankruptcy

court issued an order that pursuant to Section 1.3 of the APA, SGM is obligated to close the SGM sale by no later than December 5, 2019."

And they refer to that as the "closing order."

The memorandum decision supporting the closing order concluded, among other things, that, and I'll paraphrase.

One, adjudication, which is I think a critical term. Adjudication of SGM's obligations under the APA does not require an adversary proceeding. And then we get to number four, no material adverse effect has occurred. Number five, all conditions precedent to closing have been satisfied.

And then they go on to cite transcript references of the status conference which took place on November 26 in which the Court had some unkind things to say about SGM and its -- the Court's perception that SGM was engaging in improper negotiating strategies.

So, the point is, that the breach of contract claim in the complaint, in the case, relied on this Court's orders finding that Verity had satisfied conditions to closing. Those very same issues are on appeal. We have appealed the 8.6 order. We've appealed the November 27 order. Those issues, i.e., whether the Court properly

determined that SGM had satisfied its closing conditions, which is what this Court ordered. Those issues are now pending in the district court. The district court is going to decide whether the Court correctly decided those issues.

THE COURT: How can that -- well, I won't go into how that court could decide the issues raised by an appeal based on a business deal which died, and which is no longer an extent.

And it seems to me that your filing of the -- your client's filing of the appeal is not so much with respect to resuscitating any business deal which is gone, but in order to remove or somehow amend the findings that this Court made within the context of trying to provide a framework for the closing of a deal, which ultimately didn't.

So, I'm still mystified, and I'm more mystified because I don't think that I've heard anything that would indicate that you've reviewed the Court's tentative. And that is, that it just -- those orders don't have any meaning anymore.

MR. KLAUSNER: I did review the Court's tentative and reviewed it multiple times and have conferred with our co-counsel and our client. And I do appreciate -- and maybe I should have said this at the outset, but I was going to get to how the divestiture rule that we think has been triggered and requires a stay, you know, how that's now

impacted by the Court's comments in the tentative.

If I understand the tentative, the Court has essentially said that our concern is the utilization of these orders for purposes of the litigation. And that they could have, in our view, a preclusive effect, even a dispositive effect on the outcome of the lawsuit, because these orders would be used to establish that our client was obligated to close, which is obviously an element of the breach, and our client didn't close on December 5, which is really not disputed.

So the concern that we had with these orders was that they -- aside from the fact that -- with respect, clearly, your Honor, we do believe that they were in error. I'll review that in a minute. But the concern was that the existence of these orders would have an impact, they're court orders, that they would be used either as collateral estoppel or res judicata or law of the case, and certainly Verity has indicated that it intends to do that in the litigation.

Now, whether they have a preclusive effect -- and I appreciate that the Court has now sort of clarified what its intentions was with regard to the order. If these orders were to have -- were even not to be preclusive or not dispositive, that really is irrelevant to the divestiture rule.

The divestiture rule requires a divestiture of jurisdiction if aspects of the case are both in the trial court and in the appellate court, which they are. The fact that the Court is now suggesting in its tentative that those orders weren't really meant to be utilized, and I don't want to put words in your mouth, but that the effect of these orders was to try to facilitate a closing, but not to bind any of the parties if litigation developed. That doesn't change the fact that the divestiture rule applies.

Indeed, I don't really think the Court's tentative has any impact on what the orders actually say, although obviously we appreciate, as I said before, the clarification. That maybe that the Court's intent was that these orders really not have any validity or viability or effectiveness once the closing date came and went.

And, unfortunately, although the Court's goal in entering these orders may have been to sort of push towards a settlement or towards a closing, unfortunately, the impact of your November 27 order actually had the opposite effect. Because what happened at that point was, that the Debtors became very emboldened by the fact that they now had court orders requiring SGM to close on December 5. And armed with those orders, they used them -- that became a weapon.

We were then presented with a variety of demand letters threatening that if we didn't close the deal on

December 5, a lawsuit would be filed, claims against alter egos would be asserted, millions of dollars of damages, including punitive damages, would be sought. There was no opportunity once that order was entered to actually meet and confer and try to get a deal done.

And our client's intention from day one was to buy these hospitals. It wasn't to spend the year --

THE COURT: I think we're going farther afield from the tentative.

MR. KLAUSNER: Okay. So, the -- I think the point I need to make is, that the divestiture rule requires a stay of these proceedings irrespective of whether the Court's clarification suggests that these orders do not have a preclusive effect, or that, indeed, they have no meaning after the sale didn't close. That has no impact on the divestiture rule.

These orders are still outstanding. They're still there. And until we get involved in the lawsuit, and until there's an attempt to use these orders, and until there are decisions regarding whether those attempts are successful, we're entitled to have those orders tested on appeal. We're not required to litigate over these orders and over their preclusiveness of not preclusiveness, while we've appealed from whether these orders were properly entered.

THE COURT: Well, take me through what would

happen if the district court held in your client's -- let's see. How can we put this? If the district court were to determine that no -- held against your client, and the district court held that you're going to have to close the deal, there is no deal to close. How can it fashion a remedy on your appeal?

MR. KLAUSNER: Well, your orders were clearly not orders requiring or directing us to close. In other words, there's no order like a specific performance order. What your order said is, that the conditions were satisfied and we were obligated to close. Our position is the order was in error.

Let's take different scenario. Let's assume the district court reverses the order and says, no, based on the record --

THE COURT: Well, why don't you answer my question.

MR. KLAUSNER: Okay. Well, if the court were to find that the orders were correct, then they would not displace the orders which would then still be in place to be used in the lawsuit. But until the district court makes that decision, these orders are up in the air. They're on appeal.

So you're suggesting that the orders might be affirmed. If they're affirmed, we have less of a problem

than if they're vacated or they're reversed.

THE COURT: It sounds like you have a huge problem. Because at that point then you're obligated to close.

MR. KLAUSNER: We're not obligated to -- well, we're obligated to close, but we haven't closed, so that would simply mean that we didn't close a sale that we were obligated to close, which will be an element of a breach of contract.

The issue -- there's no order that required us by court order to close the sale. I think your wording was careful, because you said we were obligated, which really meant that from a contractual standpoint, Verity had satisfied its conditions prerequisite to closing and, therefore, we were obligated to close. The fact that that order is affirmed doesn't mean we now have to go back and close the deal. It means that our failure to close would be a breach.

And the problem with that existing order is, that today we're in a lawsuit in which the Debtor would presumably have the ability to take that order and use it against us. And here's what -- let me give you the hypothetical we're concerned about.

The Debtor files a motion for summary adjudication of the breach issue. The Debtors says, there are no genuine

disputes over the following material facts. The contract was entered into. Contract was approved by court order. Court ordered that all conditions were satisfied. Verity was obligated -- I'm sorry, SGM was obligated to close. SGM did not close, therefore we are entitled to summary adjudication of the issue of breach of contract.

And they would argue that these are orders. They are -- their argument would be these orders have a preclusive effect. They are either law of the case or collateral estoppel or res judicata. They are entitled to the benefit of those orders.

Now, I understand your comment in the tentative, which is, well, that wasn't really -- they weren't intended to be dispositive. And you used language in here in which -- and if you don't mind I'll quote, because it really raises this question. You said:

> "The APA was terminated on December 27. St. Vincent, one of the hospitals whose sale was contemplated by the APA, has not closed. The SGM sale is dead and cannot be resuscitated. The findings in the orders -- which the Court made only to facilitate the closing of the SGM sale, cannot spring back to life in the entirely different

context of the Debtors' breach of contract claim. The orders do not preclude SGM from contesting the Debtors' allegation that SGM breached the APA. SGM remains free to present evidence in this proceeding in support of its position that as of the December 5 it was not obligated to close the SGM sale. The corollary is that the Debtors cannot rely solely upon the material adverse effect order to support their allegation that SGM was obligated to close as of December 5, 2019."

Well, that is a very helpful, illuminating clarification, but that's not in the court order. The court order that we are living with says we had to close, and that all conditions were satisfied.

THE COURT: Well, one of the orders, I think it was the last in the sequence, made clear that we weren't going to go down the road of a -- of contempt proceedings here because this Court felt that at that point the deal had died, was not going to be resuscitated, and the Debtors were left with pursuing a contract action. And so that's -- and so we didn't, we didn't set an OSC re contempt. We didn't go further to enforce those orders.

MR. KLAUSNER: Well, I -- and, believe me, we appreciate that, and we never thought that contempt would be the appropriate remedy for breach of contract.

The problem with that is two-fold. First of all that --

THE COURT: Well, breach of the Court's order, but go ahead.

MR. KLAUSNER: -- that order was entered after the appeals were filed. And because of the divestiture rule, there is certainly an argument that that order is a nullity in terms of its discussion of breach of contract or conditions to closing or further right to litigate.

But even if we take the words of your order literally, what you said is, that in the future SGM will have the right to litigate whether it was in breach of contract. Well, all that means is that we have the right to be in a lawsuit. It doesn't mean that your order won't have any vitality or validity or enforceability.

You may have meant that when you said that on December 9, but that -- the mere fact that we would have the right to litigate, meaning, I'm not going to hold you in contempt, I'm going to let them sue you and then you can litigate, doesn't vitiate or nullify the fact that we would be dealing with orders, which I've already determined were adjudicated, literally adjudicated the issues of

satisfaction of conditions and failure to close.

And so the disconnect that I see here is that where the Court seems to be saying that these orders weren't really intended to apply after the sale was -- didn't close. In other words, they're almost -- almost if they're moot. That they really cease to have any validity or enforceability, because now that the sale is closed they don't matter. They're dead. They can't be resurrected. But that's not what the orders say, and there's nothing in the orders that suggest that they can't be given whatever preclusive effect they're entitled to.

THE COURT: Well, at that point because the appeals have been filed, the Court couldn't have vacated the orders. It couldn't do anything with respect to that, and it wasn't asked to do that.

MR. KLAUSNER: That is correct. That is exactly where we are. And where we are is, that it appears to us that what the Court is saying is, those orders were not intended to affect the litigation. The litigation's supposed to be on an even playing field, and those orders aren't dispositive.

And you can provide, "you," meaning SGM, can provide evidence that there was not a breach, or that the conditions were not satisfied. I'm hearing all of that. The disconnect is that that's not in the order -- the

orders. And you are correct, now that the orders are on appeal, the Court cannot modify the orders to say that. The Court can't vacate the orders.

So, our only remedy, our only remedy at this point is the appeal, because we believe, again, with all respect to the Court, we believe that these orders were in error.

THE COURT: Well, let me take another tact on it. Because you posited a hypothetical where the Debtor files a motion for summary judgment or summary adjudication of some of the issues, but one can easily determine that your client will file a motion to dismiss of the complaint, because -- citing this order here, if we actually enter it, to the effect that all of the findings and conclusions made in those prior orders have no bearing on the action in the adversary.

And I think that would -- I don't want to prejudge that motion, but I think it would be a logical motion to bring. And if the Court is consistent -- we always try and be consistent, we'd have to say, that's correct. You know, those orders, the findings and conclusions have no effect, and the Debtors have to go through the discovery process and what the -- the usual process that is engaged in when you're filing an adversary proceeding.

And so why isn't that a response to your prayer of horribles if somehow we stick to the tentative here?

MR. KLAUSNER: I think it would be wonderful if that were the ruling of the Court at some future date. But we're here today because we've taken appeals from your orders. The appeals say what -- the orders say what they say. There's now a lawsuit that involves the enforcement of these orders, and we're entitled to have an appellate court review the orders and make that determination as to whether or not those orders are effective, and whether or not they were entered properly.

Unfortunately, as we both recognize, the Court doesn't have the ability at this point from a jurisdictional standpoint to clarify or modify or vacate those orders. And we appreciate very much the Court's comments about how the Court would view these orders in a lawsuit.

Bear in mind, also, your Honor, that it's conceivable that this Court wouldn't be the trial judge. And so while it's consistent with your view of the orders --

THE COURT: What does that mean?

MR. KLAUSNER: Well, we have filed a motion to withdraw the reference with the district court. That motion is set for hearing on February 24. It is certainly possible -- we can't prejudge that, it's been opposed, but it's possible that the court could withdraw the reference. Or it's possible that the court could leave the case here until it's ready for trial.

So, there are circumstances under which it might be that the Court doesn't even have the opportunity to make the ruling that you think you would make if we filed that motion and gave you an opportunity to clarify on the record in the lawsuit what you meant with regard to those orders. We're stuck with these orders for the time being, and we've appealed them.

And we have a right to have an appellate court make a decision as to whether or not those orders were entered properly, even despite the fact that Court has now clarified its intention. Whether those orders are preclusive or not, and obviously the Court has made clear that it didn't -- they're not, that doesn't change the divestiture rule.

We still have in this case, based on their complaint, allegations that they've satisfied conditions to closing based on your orders. We have in the appellate court issues of whether those orders are enforceable or correctly decided.

And the issues that we've raised on appeal -- and I have to deal with this because there has been a suggestion that the appeals is frivolous, and that we shouldn't even have a right to appeal. And I do want to review with you, if it's okay with you, why we believe that there is some validity to these appeals. And, again, it's with all

respect to the Court. And I appreciate your comments, and I appreciate the fact that what you did was to enable this deal to get done. The problem was, this deal wasn't ready to close. There were conditions that hadn't been satisfied. There were deal issues and transactional issues that were still moving targets.

What happened here was that the Debtor, quite frankly, was concerned that we were going to trigger a right to terminate the agreement on December 31, and they really tried to put us in a position of breach so that we couldn't do that. This was a premature, unnecessary attempt to put us in breach. But what happened was, once you entered your order they stopped talking to us. We asked for mediation, we asked for a settlement meeting. We tried very hard to put this deal back together. We were completely blown off.

So, there are two issues that we have raised, two principal issues on appeal. One is, I think there are very obvious issues of due process. If we look at that November 27 order, you entered it on Wednesday, November 27 following the November 26 status conference. What was proposed for the November 26 hearing was a status conference. The Debtor had asked for a continuance of its disclosure statement hearing. The Court had granted the continuance, but asked the Debtor to file a status report regarding the sale, and requested a report as to what the Debtors' alternatives for

disposition of the properties were in the event the sale didn't close. That was what was pending.

The Debtor took letters that we had exchanged and filed them with the Court over our objection. Those letters were never intended by us to be a substitute for pleadings or briefs or evidence or argument. We never consented to them being submitted to the Court. We objected to the submission.

The Debtor submitted something called, "plan B," which was its dispositional alternative. We've never seen that. We suspect that there may have been something in there that was somewhat inflammatory, but I honestly don't know. We haven't been able to get it.

So, we have a hearing which is a status conference, at which time the Court announces that it's adjudicated the issues that the Court understood to have been raised in these letters. Our letter wasn't intended to be the sum total of every issue regarding closing of the contract, conditions, breaches, and it so stated.

But the Court took it upon itself to take the letters that were exchanged between counsel, accepted them as if they were briefs in a summary judgment motion, and the Court announced at the opening of the hearing that the Court believed that our client had been acting close to bad faith, trying improperly to retrade the deal. You weren't going to

let us do that. That all conditions had been satisfied and we had to close the deal, and then that was followed up with an order on the next day when the memorandum.

So, from a due process standpoint we had no advance notice that the Court intended to adjudicate issues regarding satisfaction of conditions. We were not given an opportunity to brief that issue, we weren't given an opportunity to provide evidence to have a hearing. Nobody asked you to make that ruling. There was no submission of evidence. There was no submission of briefs. There was no argument. There was no hearing.

THE COURT: Just to make clear, this isn't the district court.

MR. KLAUSNER: I understand, but there is an argument that's been made repeatedly by the Debtor and the committee that our appeal is frivolous.

THE COURT: I've not made that determination.

MR. KLAUSNER: You haven't, your Honor, but you've also suggested at the very end of your ruling, that you're inclined to tell the district court that we've waived our right to appeal. And I'm suggesting to you that our appeal's important and it's meritorious, and it's certainly brought in good faith. And I disagree with the Court's conclusion that we've waived our right to appeal simply by --

THE COURT: Well, that's --

MR. KLAUSNER: -- consenting to the jurisdiction of the bankruptcy court, which is a customary and usual provision in purchase agreements with Chapter 11 debtors or trustees. Parties universally agree bankruptcy court has jurisdiction to adjudicate disputes. There is no -- the word appeal doesn't appear on that section. The word waiver of appeal doesn't appear in that section. There is nothing from which anybody could fairly determine that there was an intention by either us or Verity to waive any right to appeal.

But let me get back to our story.

THE COURT: Well, that -- but that -- that only takes a little bit of the language that is really in those provisions in the APA. Because that talks about the exclusive jurisdiction, exclusive jurisdiction of the bankruptcy court.

MR. KLAUSNER: Well, meaning that's the only place we're going to litigate disputes over the breach of contract. Because if we had simply agreed to the jurisdiction, that wouldn't eliminate the possibility that we could argue for state court or federal district court. But -- so the word exclusive wasn't meant to, it wasn't meant to vitiate a right to appeal. If we had agreed to vitiate a right of appeal it would have been stated.

And there's no -- I -- there's certainly no case that's been cited that suggests that by agreeing to the exclusive jurisdiction of the bankruptcy court we waived the right to appeal. So -- and, really we're going to have a trial eventually, and there's going to be an outcome. And whoever loses may want to take an appeal, and I don't think anybody would argue that somehow by agreeing to the exclusive jurisdiction of the bankruptcy court the parties intended to waive an appellate right. That -- the law is very clear. To waive a right to appeal, you have you literally waive your right to appeal.

So -- but getting back to the merits of this appeal, we really believe that from a due process standpoint, your Honor, we were never given the opportunity to adjudicate this issue. That the Court took it away from us. It was virtually summary judgment based on the Court's in-camera review of letters that were never intended to be the sum total of all of our evidence and argument and discussion about whether conditions had been satisfied.

And believe me, that order, I was sort of chastened by your comments in court. I understood what you were saying, but the next day, which was the day before Thanksgiving, when your order and memorandum were filed, I really was astonished. I was taken aback. I just couldn't understand how the determination of satisfaction of

conditions and an obligation to close could have been literally adjudicated in the manner that it was.

THE COURT: Well, apparently, you're still exorcised by that. Your co-counsel had something to say.

MR. KLAUSNER: Thank you.

MR. RISING: Thank you, your Honor. Kevin Rising of Barnes and Thornburg. And I'll be brief. I'm -- I've brought -- I was brought in for litigation. I was brought in to try the case. And if your tentative becomes the order in the case, I want to point out just a few issues, because I think that there's going to be a lot of litigation.

You said -- and we do appreciate what you said today. That your prior orders have no meaning. And what I understand is, you know, from your description of the hypothetical, that we may file a motion to dismiss their complaint, that that would be well taken if it's based on your prior orders.

But -- and I won't reread the language that Mr. Klausner read to you before, but one of the things I want to focus on is you say, the Debtors cannot solely rely on the prior orders. But I think what you're saying -- and I would appreciate it if you would incorporate it into this order, because otherwise, we're going to have issues at the pleading stage, in the -- in discovery, in substantive motions, everything is going to be framed by the pleadings,

and they're going to constantly refer back to this order.

And, again, I do appreciate that I don't have to try this case with one hand behind my back, because the issues have already been decided without our -- us having an opportunity to represent our case.

But what I do think should be -- if this order becomes the order -- and we would urge to actually stay the case. But if this order becomes the order, I would urge you to indicate unequivocally that the prior orders have no binding effect on the adversary proceeding. That they can't be relied upon by any party to establish any fact at issue. They can't be cited as law of the case, and the Court will not consider it. That will make it absolutely clear.

That will -- you know, and I understand and I appreciate some of the language in your order that says that you don't -- you have some concerns about the cost of litigation. This is serious litigation. You hear over $100,000,000 being at issue here.

We're not going to roll over and go quietly. This is going to be hard-fought litigation, but it will be narrowed and streamlined if we don't have to constantly fight over the scope and impact of your prior orders, when your intent was to never have them used like that in this matter.

So, that's the only issue that I wanted to raise

with you, and I would implore you, if you're going to go forward with -- and enter this tentative to include language such as that, so that the parties know what the ground rules are going forward.

THE COURT: All right. Thank you.

MR. RISING: Thank you.

THE COURT: All right. Counsel.

MR. MAIZEL: Sam Maizel for the Debtors, your Honor. I'll be very brief. A couple things. First of all, the complaint that we filed -- I'm going to deal first with some factual issues, and then talk about the legal issues that I've just heard raised.

First of all, the complaint does not rely completely on the orders. It alleges in paragraph 85 that the conditions to close under the APA were satisfied, and it does so without reference to the orders.

The other sort of factual issue that keeps getting glossed over here by opposing counsel, is that the sale was actually not terminated for 22 days after December 5th, and they were given every opportunity to close, and chose not to.

And while they can stand at the podium and repeat endlessly how they wanted to purchase the assets, I don't believe there's a dispute that they wanted to purchase the assets. I think the dispute is whether they wanted to

purchase the assets in accordance with the terms of the asset purchase agreement between the parties. I think that is where the dispute arises, because it's clear they wanted to purchase the assets, but on some other deal.

Your Honor, the other thing that's sort of telling in the facts is that in -- throughout their papers, they seem to rely in their failure to close as related to eight point -- paragraph 8.7 of the asset purchase agreement, which deals with the issue of whether there was, the conditions related to transfer of the Medi-Cal provider agreement were satisfied. I notice it is completely ignored this morning.

Those factual issues are not insignificant, but as the Court has noted correctly, this is not a hearing on the appeals, and more importantly, this is not a hearing on the -- on a stay pending appeal.

And at one point Mr. Klausner said, why are we here? Well, the answer to his question, your Honor, as to why we are here is, because SGM failed to obtain. In fact, they failed to even seek a stay pending appeal from any of the orders they now have appealed. And as the divestiture rules makes clear, and this Court correctly notes, the divestiture rule is a pragmatic rule.

It doesn't say, as Mr. Klausner repeatedly suggested, that any aspect of the case, which somehow

tangentially touches upon the orders on appeal, must be stayed. If they had wanted a stay, they could have sought a stay pending appeal. They didn't.

What the divestiture rule suggests -- says is that the Court may still -- and this is language from the Ninth Circuit. Absent a stay pending appeal:

"The bankruptcy court retains jurisdiction over all other matters that it must undertake to implement or enforce the judgment or order. The court may not alter or expand upon the judgment. If the party..."

This is from Sherman v. SEC, your Honor, 491 F.3d at 967. "If a party wants to stay all of the proceedings in bankruptcy court," which is what they're trying to do here, "while an appeal is pending, it must file a motion for a stay," which it didn't.

If the Court -- if all the parties agree that the language of the divestiture rule allows the Court to implement or enforce the judgment or order, it is hard to see how allowing the adversary proceeding to go forward is not consistent with that well-recognized limitation on the divestiture rule.

Your Honor, it's interesting. The Court has made very clear in its papers in the tentative ruling this morning, the limits of those prior orders. It says repeatedly that those orders have very limited effect. It

says the orders -- quote:

"The orders do not adjudicate whether SGM had breached the APA, nor do the orders contain findings that compel the Court to rule in the Debtor's favor with respect to the complaint's breach of contract claims."

The order goes on to say -- the tentative goes on to say:

"The SGM sale is dead and cannot be resuscitated. The findings in the orders cannot bring back to life in the entirely different context of the Debtors' breach of contract claims."

Then it goes on to say later:

"The corollary is that the debtors cannot rely solely on the material adverse effect order to support their allegation that SGM was obligated to close as of December 5th."

And then it goes on to say:

"Because the findings in the orders were limited to the failed SGM sale, those findings are not dispositive of the claims asserted in the complaint."

If the Court enters the tentative as the final order, it is hard to imagine how the Debtors could read this order -- and the case law is clear that no court is better able to interpret its own orders than the court that issued the orders. And that would apply here. So the -- there's no -- it is hard to fathom how we could interpret this order interpreting your prior orders.

And, by the way, the divestiture rule doesn't say that you can't interpret your prior orders, it only says you can't alter or amend your prior orders. It is hard to fathom how we could read these and not understand the Court's direction on what we will have to prove to prove up our complaint.

But it's interesting because in the papers the SGM says that, at one point it says, they didn't bother to seek a stay pending appeal because the orders are not enforceable, and then they go on to argue about the preclusive effects the orders will have in their subsequent defense of the adversary proceeding.

You can't have it both ways, your Honor. You can't argue that they failed to seek a stay pending appeal because they recognize the orders were not enforceable, and then argue to this Court today and in their papers, that the reason they are seeking a stay pending appeal is because of the preclusive effects of those orders.

Your Honor, it's, it is re-arguing the papers, and I think it's really reinforced by the arguments -- both by the comments by the Court about the interlocutory nature of these orders, and the arguments of opposing counsel that these orders were interlocutory.

And with regard to a subsequent appeal the case law is pretty clear, that those orders, to the extent they are used at all -- and it's not clear to me standing here today based on the tentative, that they could be used for virtually any purpose. But to the extent they are used for some purpose in the future, it's clear that as interlocutory orders, they would be rolled into and be subject to appeal in any final order arising out of the adversary proceeding.

Your Honor, we think the Court is correct on both its rulings with regard to waiver and regard to mootness. The fact that the, as the Court put it, the SGM sale is dead and can be -- and not be resuscitated, it goes directly to the Court's questions to Mr. Klausner about what happens on the appeals?

And the answer is, it isn't clear to us what happens with regard to the appeals no matter which way the court rules. Because, as this Court has noted, it's going to decide whether there was a breach of contract claim in the adversary proceeding. And to the extent that the appellate court decides whether any of the order -- the

prior orders have any effect -- or were correctly decided, isn't going to resolve that decision. So, in that respect they would be interlocutory in the classic sense of an interlocutory order.

And because the SGM transaction cannot be resuscitated the -- it's not clear what effect they would have, and, therefore, they're moot. Because as all the parties agree, the Court didn't try to rule that the sale had to close, and now the sale can't close. So all we're left with is deciding who breached and what are the damages.

With regard to waiver, I think, your Honor, the Court in the tentative again points out the operative language from the asset purchase agreement. With regard to the material adverse effect order, the language in the asset purchase agreement on waiver could not be more clear. It says:

> "Any dispute between SGM and the sellers..."
>
> The Debtors:
>
> "...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."

Exclusive, your Honor. Now, it was interesting.

I tried to follow Mr. Klausner's argument at the podium, and I think I can summarize it best by saying, his argument is that exclusive doesn't mean exclusive, which is an interesting argument but hard to see how that's going to play out in a court.

When the express language of the contract between the parties says, "it shall be exclusively settled," which I don't mean -- which I don't read, certainly, when he asked, who could read it differently than he does, I certainly don't read it as saying, and then other courts can weigh in on it as well. Exclusive means exclusive, your Honor.

With regard to the sale enforcement order and the section 8.6 order, the asset purchase agreement again is pretty clear, and the Court quotes the language directly in the tentative. The language is, "the parties irrevocably elect as the sole judicial forum," the sole judicial forum, your Honor.

To read that as then saying, the sole judicial forum, but there will be other judicial forums that can subsequently decide it, seems completely inconsistent with the plain language of the contract which says:

> "The parties irrevocably elect as the sole judicial forum for the adjudication of any matters arising under or in connection with the asset

purchase agreement, and the parties consent to the exclusive jurisdiction of the bankruptcy court."

That covers all three of the items on appeal, your Honor, all three of the orders on appeal.

So, between the limited role of the divestiture rule here, the ability of the Court to enforce the judgments absent a stay pending appeal, the issues of mootness and waiver, which the Court ruled on in the tentative, we believe that the motion for a stay here should be denied.

THE COURT: Thank you.

Anything further?

MR. KLAUSNER: Yeah. I think Mr. Rising and I have a couple of comments. Mr. Maizel talked about the issue of section 8.7, suggested that we didn't argue it. I only stopped arguing because the Court had noticed that Mr. Rising had a comment, but I was about to get to that as part of the discussion of the good faith of the appeals, which is important I think to the overall analysis of this divestiture issue.

Section 8.7 of the asset purchase agreement very clearly required that in order to close the deal, the Debtor had to provide to SGM a settlement agreement. And the settlement agreement with Medi-Cal or with CMS, both of them, had to provide to SGM a full release and a discharge

of any claims that could be asserted -- any claims that they had against Verity that could be -- they had to discharge SGM from any claims that could have been asserted against Verity. In other words, SGM was going to take the assets, including the transfer of the provider agreement, without any liability or recourse for claims against Verity. That's what 8.7 required.

And the issue is, well, what was the status of that condition as of November 19? November 19 is the key date here. That is the date that the Debtor represented that all conditions to closing had been satisfied.

And in the Debtors' closing demand letter of November 20, the Debtor mentioned that they had entered into an agreement with CMS. They were silent with regard to Medi-Cal. So, when we got to the hearing on the 26th, Mr. Maizel said that they had reached an agreement in principal with Medi-Cal.

In the Court's memorandum decision of November 27, the Court had a footnote regarding 8.7 and regarding Medi-Cal, in which the Court made reference to the Court's own prior order of October 11, which the Court said was a sufficient, sort of substitute for a settlement agreement.

What we know is that, number one, there was no settlement agreement with Medi-Cal under December 9. That was the date that the Department of Health Care Services

executed a stipulation with the Debtor, which would have been the settlement agreement required by 8.7 if it had actually complied with the terms of 8.7. It frankly did not, but, unquestionably, there was no agreement until then.

So, the requirement of 8.7 that there be a settlement agreement, meaning that we have the agreement of Medi-Cal, we have the agreement of the department. SGM has a full release and a full discharge. There was no such agreement -- there's no agreement in principal that satisfies that condition. That there's no such thing.

So, now let's look at the Court's order. Well, the Court's order of October 11, which was the order that granted the Debtors' motion to transfer the Medi-Cal provider agreement to SGM, would have been an order free and clear of all claims and liens and encumbrances, except for the fact that the Court made its own interlineation in the order that we had prepared.

We had worked with the Debtor to prepare the order that would deal with this issue. The Court made an interlineation, and the Court very clearly said, I'm not resolving the issue of recoupment. Whether Medi-Cal has a right to recoup is not before me and I'm not deciding it.

So, instead of getting a settlement agreement, we would have had an order on December 5 -- well, let's assume nothing changed, which nothing did. So on December 5 we

would have closed the deal with a court order, which left open the issue of recoupment. Which means that our client would have acquired the provider agreements subject to the possibility that Medi-Cal could enforce a recoupment right against our client in our client's attempt to collect receivables that were purchased from Verity. Those receivables would then be offset -- we don't use the word offset, recouped by Medi-Cal for claims of up to $80,000,000. And, by the way, the October 11 order was on appeal.

So, the closing would have required us to ignore the fact that we were entitled to an agreement signed by the department, but rather to accept as a closing condition a non-consensual order subject to an appeal, containing an express reservation of the right of recoupment, which had not been resolved after the October 11 order.

And I know in the complaint there is a discussion or an argument that we should go back to the sale order of May 2, which purportedly nullified the right of recoupment. But the Court in that order very clearly reserved all issues relating to the transfer and assignment of the Medi-Cal provider agreement.

So there was nothing decided on May 2 regarding whether any claims, liens or encumbrances or recoupment rights would survive. That was left for a later decision.

The later decision was the October 11 decision which left open the issue of recoupment.

So to suggest that on November 19 section 8.7 had been satisfied in the absence of an agreement, and in the absence of a court order that was final that clearly expressed that the transfer would be free and clear of any possibility that Medi-Cal can enforce any of its rights against either SGM or its assets, that was not satisfactory.

Now we didn't have a chance to make that argument in front of the Court. We didn't have a chance to brief it, we didn't have a chance to put on evidence, we didn't have a chance to challenge the statements by Mr. Maizel at the hearing that an agreement in principal had been reached. That's one of the reasons why it would have been important for us to have had an opportunity to be heard on that issue, which we never had.

So, I'd now like to defer to Mr. Rising.

THE COURT: Very well.

Go ahead, Mr. Rising.

MR. RISING: Thank you, your Honor. I'll be very brief. The issue of failure to seek a stay, it's a red herring. There's, there was nothing to stay with respect to these orders. These orders didn't actually order my client to do anything, nor did they order anyone to do anything. What they did make were findings of fact and conclusions of

law that could have an effect down the road in other litigation.

So there's no requirement under the law that we seek a stay of those orders. And your statements and your clarification of your order make it clear that there was nothing to seek a stay of. So, that is a red herring.

I heard Mr. Maizel talk about the order as written, and no party would think that they could use it, and they fully understand the scope. I don't think he really objected to the language that I asked to be put into the order to make it absolutely clear. If he thinks he knows, let's make it absolutely clear. Let's make sure in this order, if this order is entered, that it has no preclusive effect. That it's not binding, that it can't be used in the adversary proceeding.

As to the waiver issue, I litigate these things all the time. I litigate contracts. This contract is governed by California law. You have to follow the canons of construction under California law. You have to ascertain the intent of the parties, both from the document itself and from the circumstances surrounding the entering into it.

As I understand this idea of certification of a waiver of the appeal, there would have to be a hearing, an evidentiary hearing on those issues. The parties would have to undertake discovery. Have to go back and look and see

what the conversations were, where the lawyers who were involved in this, what language they've used in other contracts. This is not language that they drafted from whole cloth.

As I understand it, this was an agreement that was actually used and modified from the sale with the county. What did they intend? Did they actually intend to waive the right of appeal? Did Mr. Maizel intend at the outset -- not down the road when it was convenient, but at the outset of entering into this agreement, did they intend to waive all appellate rights?

If you made a ruling that they found adverse about the APA, if you had an interpretation of the APA that was totally counter to what they would -- they wanted, did they agree before the parties ever moved forward that they had no right to appeal that, that that ruling was final? Absolutely not. No attorney would agree with -- agree to that.

THE COURT: Well, that's -- I'd have to turn on my memory banks, because we had I think an extensive discussion about what that language meant. And it was clear to me, and so somebody must have said it, that exclusive jurisdiction meant that it was not going to be appealed.

And, again, I'd have to take a look at who said what. But if you're telling me that the Court cannot take

this language, which it appears from time to time in asset purchase agreements, for what it is, then I think that calls into question every APA that comes before the Court, and we can't do that.

MR. RISING: I'm speaking from my personal experience, your Honor. When people say they want to -- they're going to waive their right to an appeal, you actually the word "appeal." You -- when you say there's going to be a waiver, and the Court is required to read waiver narrowly.

THE COURT: Okay. Well, I don't want to get any further into it --

MR. RISING: Okay.

THE COURT: -- because I think there was extensive discussion. So you might want to take a look at some of the transcripts of prior hearings.

MR. RISING: Thank you, your Honor.

THE COURT: Anything else?

MR. RISING: That's all.

THE COURT: All right. Thank you.

MR. SHINDERMAN: Your Honor, just one --

THE COURT: Yes, Mr. Shinderman.

MR. SHINDERMAN: Thank you.

THE COURT: The tentative did allow the creditors committee to file papers which would be reviewed by the

Court. I haven't heard any opposition to that further.

MR. KLAUSNER: No, your Honor. I actually had a conversation with Mr. Shinderman before the court hearing. I indicated to him that we were not opposed to his arguing today. We just wanted to be clear that if the committee decided that it wanted to intervene in the lawsuit, it would file a motion. All of our rights regarding that motion would be preserved, and he so agreed.

THE COURT: All right.

MR. SHINDERMAN: Yes, your Honor. Thank you. Mark Shinderman, Milbank, on behalf of the committee. Mostly I just like to hear myself talk, which is why I got up. But, your Honor, counsel just said something that was very important. He said there was nothing to stay. The orders didn't require anything to be done. Well, that underscores the third argument that the Debtor made, that these are interlocutory orders. Right.

So you have the first argument that Mr. Maizel makes quite persuasively, that we're not ready to file a divestiture rule, especially because your Honor said these were of limited purposes, and they're not relevant anymore. We're not seeking to alter or amend those in any way, the Debtors' not.

Second, they're not stayed, so to the extent they have any effect whatsoever, this Court may proceed with

them. Again, limited effect though they may be.

And third is, if there's nothing to stay as counsel suggested, then they're interlocutory. But I did want to take one further step. I want to make it very clear the committee did not rely on your Court's orders for its position supporting the Debtor in bringing the complaint.

The committee supported the Debtors' complaint against SGM because SGM did not close. Because millions of dollars were lost and thousands of jobs forever missing. Cancelled, fired, rift. Okay. That's why we supported the Debtor bringing the motion, not because of what this Court said, but because SGM did not close.

Now, if SGM wanted a de minimis purchase price adjustment, we would have listened. If they had made a proposal in writing, we would have listened. We didn't need to go to mediation to find out that the ask was too large. We needed to move forward with the complaint, which is why we supported the Debtor in opposing the stay motion.

This complaint needs to go forward. The estate has been deprived of tens of -- of hundreds of millions of dollars and jobs have been lost, and SGM must be held accountable. Thank you, your Honor.

THE COURT: All right. Thank you very much.

Very well. Anything else?

MR. MAIZEL: Your Honor, just a couple points.

One, the question of this, whether the documents express waiver terms are sufficient. You know, I can't argue with counsel's apparent expert testimony as to what he knows, but this asset purchase agreement at paragraph 12.14 says:

> "The agreement contains the entire understanding between the parties with respect to the transactions contemplated hereby, and supercedes all prior or contemporaneous agreements, understanding, representations and statements oral or written between the parties on the subject matter hereof."

Your Honor, that's a pretty typical clause in an asset purchase agreement. And while I can't speak for what Mr. Klausner or his clients thought they were saying, the case law is very clear that in interpreting an asset purchase agreement, it isn't subject to discovery. It isn't subject to discussions with parties as to what they thought they were saying, unless the plain language of the contract is not clear.

And here it is, your Honor. The language that the Court cited in the tentative could not be more clear, and the case law says that if the document is clear on its face, there is no need for parol evidence to discuss what parties thought they were writing when they wrote the document.

Your Honor, I'm not going to go through paragraph 8.7 in detail. Suffice it to say that the Court's May sale order cut off recoupment rights generally, and reserved to the Department of Health Care Services only the right to contest the transfer, issues related to the transfer of the agreement, which this Court is completely familiar with.

The issues raised by the department that were preserved in the sale order related to whether it was a contract or an executory -- a contract or a license. And it said, the issues, the stale (sic) -- the original May sale order doesn't apply until either there's a settlement or an order disposing of the department's objections.

So when the subsequent order is entered that disposes of the specific objections and rules that it is a license not a contract, that means that the Debtor can then rely on both it, that order, and the prior May sale order, which expressly cut off recoupment rights for all parties.

And in the order that relates directly to the department, your Honor, the Court didn't say they had recoupment rights. It specifically said it wasn't ruling on the rights of recoupment, if any. When you put those two orders together, your Honor, it is clear that the sale was free and clear -- the sale of the provider agreement was free and clear and without recoupment rights. There's no other way to read those two orders.

Now, recognizing that SGM had still insisted that there be a settlement, although the paragraphs in the asset purchase agreement say that the Debtor has to materially comply, and we believed we had, we then went out and got a settlement. Which we had reached in principal, as we told SGM before, before the December 5th date. We papered it, and that was agreed to and approved by the Court on December 9th.

This asset purchase agreement wasn't terminated until December 27, and, you know, we're not trying this here today, but it is noted -- notable that between December 9th, when there was no question as to whether there was a settlement agreement over this issue that satisfied the asset purchase agreement, and December 27th, SGM didn't seek to close.

THE COURT: All right. Thank you.

MR. KLAUSNER: Just a quick -- I know. I appreciate the indulgence, your Honor. Just a couple of quick comments. And let me get back to 8.7. So, the argument that Mr. Maizel is making is, is that you would take the May 2 order and you take the October 11 order, the combination of these two orders would have given us protection. That -- we didn't bargain for an argument to be made to Medi-Cal.

If Medi-Cal had started recouping from our

receivables, we would have had to have gone to some court and argued to the court, take a look at this May 2 order, take a look at the October 11 order and sort of put them both together, and the combination is, they can't do this. We didn't bargain for the ability to argue. We bargained for an agreement. We bargained for Medi-Cal's agreement to release us.

So this idea that we can now patch together two different orders, the second of which was completely contrary to the argument that recoupment had been vitiated by the first order. If it had, the Court wouldn't have preserved recoupment in the second order.

So, Mr. Maizel has just made our case for us. He's just demonstrated that as of November 19, which is the key date, not December 5, not December 9. The date that they represented that all conditions for closing have been satisfied, and which triggered the 10-day closing, 10 business day closing requirement of December 5, that's what's at issue.

There's no doubt at this point that they've conceded that they didn't have an agreement. And the idea that we would combine these two orders and make an argument at some future date, that's absurd. That we'd close a deal with $80,000,000 in potential liability. That's absurd.

And, finally, with regard to this waiver, your

Honor, there is a difference between what the agreement says, which is waiving any objection to the jurisdiction of the bankruptcy court, and consenting to the jurisdiction of the bankruptcy court to resolve and adjudicate disputes. There is a difference between that, which we don't dispute, and waiving a right to appeal, which doesn't appear in the document. Those are two very distinct concepts.

And the concept of a waiver of appeal was never expressed in the agreement, and it is not inconsistent with the concept of consenting to the exclusive jurisdiction to adjudicate disputes and controversies over the APA. And it's actually unclear at this point whether there was an adjudication based upon the Court's comments, that it really wasn't intending to adjudicate disputes and controversies over the APA that may, ultimately, may be before it.

So these orders may not even constitute an adjudication, but there's no dispute that we didn't waive any right to appeal. It's just not there, and it can't be read into it.

THE COURT: All right.

MR. KLAUSNER: And one other quick comment, and that is, this final comment about the Court's certification. We've taken a look at this issue because, frankly, I've never of this before. And we looked at the cases that relate to certification.

This concept, which is -- has nothing to do with bankruptcy law or bankruptcy courts or bankruptcy jurisdiction. This concept is something that was created by the Ninth Circuit, which allows district courts in a very narrow context, appears to be the context where issues of qualified immunity and double jeopardy have been raised at the trial level.

This -- the Ninth Circuit has permitted the trial courts to conduct an evidentiary hearing to determine the frivolousness of those defenses. And if there's an appeal, an interlocutory appeal -- let's assume somebody's arguing for qualified immunity. The district court rejects that argument. They take an interlocutory appeal. Under ordinary circumstances, the appeal would stay further proceedings in the bankruptcy -- in the district court as a result of divestiture.

This certification process is a very narrow exception to the divestiture rule. And what it does is it allows the district court in the context of these qualified immunity claims or double jeopardy claims, to actually have a hearing to determine the merit.

And if the district court determines after a hearing that these arguments are frivolous, then the district court can certify to the appellate court that these issues are frivolous, so that the divestiture rule can be --

so that the district court can be released from the divestiture rule. It has nothing, no application to what's before you.

THE COURT: All right.

MR. KLAUSNER: Thank you.

THE COURT: Thank you.

The matter is submitted. Thank you.

(Proceedings concluded.)

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ Holly Steinhauer — 2-13-20
Transcriber — Date

Exhibit W

Exhibit W

GARY E. KLAUSNER (SBN 69077)
JEFFREY S. KWONG (SBN 288239)
LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.
10250 Constellation Boulevard, Suite 1700
Los Angeles, CA 90067
Telephone: (310) 229-1234
Facsimile: (310) 229-1244
Email: gek@lnbyb.com; jsk@lnbyb.com

KEVIN D. RISING (SBN 211663)
L. RACHEL LERMAN (SBN 193080)
JOEL R. MEYER (SBN 247620)
BARNES &THORNBURG LLP
2029 Century Park East, Suite 300
Los Angeles, CA 90067-2904
Telephone: (310) 284-3871
Email: kevin.rising@btlaw.com; rachel.lerman@btlaw.com;
joel.meyer@btlaw.com
Attorneys for Strategic Global Management, Inc.

UNITED STATES BANKRUPTCY 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, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services

Lead Chapter 11 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 Case No. 2:20-ap-01001-ER

☐ 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;

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.

REPLY TO OPPOSITIONS TO "STRATEGIC GLOBAL MANAGEMENT, INC.'S . . . MOTION TO STAY ADVERSARY PROCEEDING"

Date: February 11, 2020
Time: 10:00 a.m.
Judge: Ernest Robles
Place: Courtroom 1568
255 E. Temple Street
Los Angeles, CA 90012

TABLE OF CONTENTS

I. INTRODUCTION 1

II. FACTUAL AND PROCEDURAL BACKGROUND 3

A. Over Two Decades of Losses Leading to Bankruptcy 3

B. The Debtors' Failure to Comply with Their Contractual Obligations 3

C. The Bankruptcy Court's Decision, Reached without Notice or Hearing from SGM 13

D. The Debtors' Continued Misconduct 9

III. ARGUMENT 10

A. Divestiture Is Mandatory in this Case, Regardless Whether the Rule Is Characterized as Jurisdictional Per Se or as Prudential 10

B. The Appeals Divest this Court of Control Over the Issues in the Adversary Complaint, which Rests Its Allegations on the Orders on Appeal and Asks this Court to Decide Issues Pending in the District Court 11

C. SGM Had No Obligation (and No Reason) to Seek Stays of the Orders on Appeal 13

D. This Court Should Disregard the Debtors' Collateral Attacks on the Appeals and Their Efforts to Undermine the District Court's Jurisdiction 14

E. The Orders Are Not Interlocutory 17

F. The Appeals Are Not Moot 20

G. SGM Did Not Waive Its Right to Appeal 22

H. The Committee's Opposition Should Be Stricken or Ignored 25

IV. CONCLUSION 25

DECLARATION OF GARY E. KLAUSNER 27

TABLE OF AUTHORITIES

Page(s)

Cases

In re Air Vermont, Inc.,
47 B.R. 536 (Bankr. D. Vt. 1985) 14

In re Altman,
265 B.R. 652 (Bankr. D. Conn. 2001) 25

Ashker v. Cate,
2019 WL 1558932 (N.D. Cal Apr. 2019) 11

Atari Corp. v. Ernst & Whinney,
981 F.2d 1025 (9th Cir. 1992) 11

In re Baker & Drake, Inc.,
35 F.3d 1348 (9th Cir. 1994) 14, 21

In re Bonham,
229 F.3d 750 (9th Cir. 2000) 18, 19

Brown v. Gillette Co.,
723 F.2d 192 (1st Cir. 1983) 24

In re Burrell,
415 F.3d 994 (9th Cir. 2005) 15

In re Catholic Bishop of N. Alaska,
No. ADV F08-90019-DMD, 2009 WL 8446700 (Bankr. D. Alaska Mar. 25, 2009) 25

Cobb v. City of Stockton (In re City of Stockton),
909 F.3d 1256 (9th Cir. 2018) 14

In re Colortran, Inc.,
218 B.R. 507 (B.A.P. 9th Cir. 1997) 9

In re Deepwater Horizon,
785 F.3d 986 (5th Cir. 2015) 23

DeLoach v. Lorillard Tobacco Co.,
391 F.3d 551 (4th Cir. 2004) 23

Fuentes v. Shevin,
407 U.S. 67 (1972) 8

In re Golden Plan of California, Inc.,
829 F.2d 705 (9th Cir. 1986) 8

Griggs v. Provident Consumer Disc. Co.,
459 U.S. 56 (1982) 10, 11, 12

Hamer v. Neighborhood Housing Servs. of Chicago,
138 S.Ct. 13 (2017) 10, 11, 22

In re Latimer,
918 F.2d 136 (10th Cir. 1990) 25

In re Loloee,
241 B.R. 655 (B.A.P. 9th Cir. 1999) 8

In re Lybarger,
793 F.2d 136 (6th Cir. 1986) 24

Lynch v. McDonald,
155 Cal. 704 (1909) 10

Mercado-Guillen v. McAleenan,
2019 WL 1995331 (N.D. Cal. May 6, 2019) 11

In re Nelson,
391 B.R. 437 (B.A.P. 9th Cir. 2008) 21

In re Odyssey Contracting Corp.,
No. 19-1150, 2019 WL 6766985 (3d Cir. Dec. 12 2010) 24

Project B.A.S.I.C. v. O'Rourke,
907 F.2d 1242 (1st Cir. 1990) 22

Ritzen Grp., Inc. v. Jackson Masonry, LLC,
No. 18-938, 2020 WL 201023 (U.S. Jan. 14, 2020) 17, 19

Rodriguez v. County of Los Angeles,
891 F.3d 776 (9th Cir. 2018) 10, 11

Ruby v. Sec'y of the U.S. Navy,
365 F.2d 385 (9th Cir. 1996) 16

Slattery v. Ancient Order of Hibernians in America, Inc.,
1998 WL 135601 (D.C. Cir. 1998) 24

Slimick v. Silva (In re Slimick),
928 F.2d 304 (9th Cir. 2007) 18

In re Stewart,
157 B.R. 893 (B.A.P. 9th Cir. 1993) 20

Symantec Corp. v. Glob. Impact, Inc.,
559 F.3d 922 (9th Cir. 2009) 15

The Minesen Co. v. McHugh,
671 F.3d 1332 (Fed. Cir. 2012) 24

Tom Growney Equip., Inc. v. Shelley Irr. Dev., Inc.,
834 F.2d 833 (9th Cir. 1987) 8

Tridyn Indus., Inc. v. American Mut. Ins. Co.,
296 N.C. 486 (1979) 14

U.S. Consol. Seeded Raisin Co. v. Chaddock & Co.,
173 F. 577 (9th Cir. 1909) 23

U.S. v. Gomez,
757 F.3d 885 (9th Cir. 2014) 22

U.S. v. Hickey,
580 F.3d 922 (9th Cir. 2009) 16

U.S. v. International Broth. Of Teamsters,
905 F.2d 610 (2d Cir. 1990) 23

Statutes

11 U.S.C.

§ 365 5

§ 365(b) 4, 5

§ 1109(b) 25

Other Authorities

Federal Rule of Civil Procedure 12(b)(6) 8

Federal Rule of Civil Procedure 24(a)(1) 25

Federal Rule of Civil Procedure 54(b) 15

Federal Rules of Bankruptcy Procedure 8003(c) 20

Strategic Global Management, Inc. ("SGM") submits this reply (the "Reply") to the oppositions filed by Verity Health System of California, Inc., *et al.* (the "Debtors" or "Verity") [Adv. Doc. No. 24] (the "Opposition") and the Official Committee of Unsecured Creditors (the "Committee") [Adv. Doc. No. 25] (the "Committee Opposition") to SGM's "*Motion To Stay Adversary Proceeding*" [Adv. Doc. No. 19] (the "Motion"), and respectfully represents as follows:

I. INTRODUCTION

In their respective oppositions, the Debtors and the Committee[1] misstate the factual and procedural history of this matter to argue that this Court should deny the Motion to stay the Adversary Proceeding, as the law requires, on the ground that SGM breached the Asset Purchase Agreement ("APA") with the Debtors, and is responsible for the failure of the four hospitals which are the subject of the APA. This argument fails as a matter of law and equity.

SGM had a plan to save these facilities, and to continue providing needed care in their respective communities. It was the Debtors' improper attempt to force a premature sale closing that caused the sale transaction (the "Sale") to fall apart. SGM, for its part, tried valiantly to save the Sale transaction, even after the Debtors wrongfully terminated the APA, including by requesting that the Debtors participate in mediation and settlement meetings. The Debtors rejected these proposals. SGM also filed a motion with the District Court requesting an order directing the parties to comply with the District Court's mandatory ADR Program; both the Debtors and Committee opposed that motion. This motion remains pending.

As the Debtors would have it, SGM has no right to appeal Orders entered without due process, and no right to adjudicate the subject of those Orders in an adversary proceeding.

First, the Debtors argue that SGM's appeals (the "Appeals") from this Court's orders of November 14, November 18 and November 27, 2019 (collectively, the "Orders"), all of which

---

[1] As described more fully in Section III.H, *infra*, the Committee Opposition should be stricken or simply ignored, because it is neither a party nor a permitted intervenor to the Adversary Proceeding.

relate to whether the Debtors satisfied the conditions to closing as of November 19, 2019, should be dismissed, thereby nullifying any appellate remedy to which SGM is entitled.

At the same time, the Debtors argue that these Orders, which form the basis for the breach of contract claims set forth in the Debtors' Complaint against SGM and others, will have a preclusive effect on the rights of SGM and the other defendants to defend the breach of contract claims on their merits.

If successful, the Debtors would achieve the Holy Grail of litigation: a judgment on its breach of contract claims without the defendants *ever* having had the opportunity to provide evidence, legal briefs, witnesses, documents or argument supporting their defense to the breach of contract claims or appeal from adverse orders.

This Court should prevent the Debtors from proceeding with their Complaint against SGM and the other defendants, in the face of the pending Appeals. The District Court's jurisdiction resulting from the Appeals (all of which were filed before the Debtors filed their Complaint) cannot be circumvented by any of the unsupportable and contradictory arguments raised by the Debtors.

First, the divestiture rule requires this Court to stay any action that involves the issues pending in the District Court, lest the courts reach divergent results. Here, the claims and causes of action for breach of contract set forth in the Complaint are expressly based on this Court's Orders. *See* (Compl. ¶¶ 83-90, 100.) The Debtors try to minimize the significance of the Orders (by creating innocuous sounding nicknames for them) but they cannot deny their unequivocal reliance on those Orders to establish, support, and enforce their claims against SGM and other defendants. Indeed, the Debtors' own Opposition demonstrates the degree to which the issues overlap. The Orders also affect SGM's counterclaims, which it will raise at the appropriate time.

To the extent that the Debtors contend that the Appeals should be dismissed on grounds of mootness, waiver, or because they are "interlocutory," these issues are properly before the District Court sitting as court of appeals.

As set forth in detail below, this Court was misled by Debtors' disingenuous contention that they had satisfied all conditions to closing as of November 19, 2019. Justice requires that SGM have its chance to demonstrate the falsity of the Debtors' position. Justice requires that SGM be

allowed to prove that Debtors: acted in bad faith; made false representations of fact and law to force a premature sale closing and manufacture a breach of the APA; hurriedly moved to close hospitals that they apparently always wanted to close; all while trying to keep $30 million of SGM's money.

In sum, this Court must not let the Debtors take advantage of Orders that were entered without due process by shielding them from appeal, while using them as a sword in the Adversary Proceeding.

II. FACTUAL AND PROCEDURAL BACKGROUND

SGM includes a recitation of the facts to respond to the Debtors' and the Committee's spurious allegations, and set the record straight regarding the events leading up to the present dispute.

A. Over Two Decades of Losses Leading to Bankruptcy.

After 25 years of substantial operating losses and any number of attempts to rescue the Debtors hospitals, the Debtors filed their bankruptcy petition on August 31, 2018 and instituted a process to sell its six hospitals. The Debtors, with Court approval, sold their two hospitals in Santa Clara County to the County.

Shortly thereafter, SGM generated a plan to resurrect four of the Debtors' hospitals and made a good faith offer to purchase the hospitals for $610 million, subject to adjustments set forth in the eventual APA. The Debtors ultimately selected SGM to purchase the hospitals after no other potential buyer made a fully qualified bid. In accordance with the terms of the parties' APA, SGM made its initial deposit of $30 million.

B. The Debtors' Failure to Comply with Their Contractual Obligations

The Debtors had numerous obligations under the APA, including many they were required to perform before SGM would be required to close the transaction. Notably, Section 8.7 of the APA obligated the Debtors to transfer their Medicare and Medi-Cal provider agreements to SGM pursuant to "settlement agreements" with the CMS (Medicare) and DHCS (Medi-Cal). Such transfers are critical because the purchasing entity cannot obtain payment for services to patients covered by Medicare and Medi-Cal without a provider agreement. Section 8.7 provides:

> Sellers shall transfer their Medicare provider agreements pursuant to a *settlement agreement* . . . with the California Department of Health Care Services ("DHCS"), which such settlement agreement[] shall result in: (i) resolution of all outstanding financial defaults under any of Sellers' . . . Medi-Cal provider agreements and (ii) full satisfaction, discharge and release of any claims under the . . . Medi-Cal provider agreements, whether known or unknown, that . . . DHCS . . . has against the Seller or Purchaser for monetary liability arising under the . . . Medi-Cal provider agreements before the Effective Time; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant . . . Medi-Cal provider agreements assigned and shall be treated, for purposed of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.

(APA § 8.7) (emphasis added.)

The debtors failed to satisfy this condition, either as of November 19, the date they represented to SGM and to the Court that they had satisfied this condition, or thereafter.

For background, the Debtors had accumulated substantial liabilities to the California Department of Health Care Services ("DHCS"), which administers Medi-Cal in California, for unpaid Hospital Quality Assurance Fees ("HQAF"), and for Medi-Cal fee-for-service overpayments. During the course of the case, DHCS continued to find new and additional claims and eventually claimed that the Debtors owe it over $80 Million. DHCS contended that all of these claims had to be "cured" in order to allow SGM to assume the Debtors' Medi-Cal provider agreement.

On March 22, 2019, DHSC filed an objection to the proposed Sale to SGM, arguing that the Medi-Cal provider agreements between it and the Debtors were executory contracts that could not be transferred free and clear of claims, interests, and encumbrances unless all defaults were cured, as required by Bankruptcy Code § 365(b). Thus, according to DHCS, the provider agreements associated with each of the hospitals could not be transferred to SGM unless and until the Debtors cured the unpaid HQAF and fee-for-service overpayments. In response to DHCS' objection to the sale on April 10, 2019, the Debtors argued that they did not need do so because the Medi-Cal agreements are non-executory contracts.

On May 2, 2019, the Court entered its Sale Order authorizing the sale of the Debtors' assets to SGM free and clear of claims, liens, and encumbrances. However, the Sale Order expressly

carved out Medi-Cal Provider Agreements from the released claims, liens, and encumbrances. Specifically, the Sale Order states: "Nothing in this Sale Order shall apply to Medical Provider Agreements until and unless there is a court order approving a settlement between the Debtors and the DHCS or a court order resolving the DHCS's objection." (Doc. No. 2306.) Thus, as of the date of the Sale Order, Debtors' Medi-Cal obligation under § 8.7 had not been satisfied

On September 11, 2019, DHCS filed a Supplemental Brief regarding its unresolved objection to the Sale of the hospitals free and clear of Debtors' Medi-Cal Provider Agreements. (Doc. No. 3043.) The Debtors contested DHCS's characterization of the Medi-Cal Provider Agreements as executory contracts. The Debtors filed a Reply Brief in which they once again argued that the Provider Agreements could be transferred free and clear of any liens and claims without compliance with Bankruptcy Code § 365, while recognizing the need to provide SGM with such a transfer to satisfy its contractual obligations. (Doc. No. 3095, 13) ("SGM is willing to provide needed services to Medi-Cal beneficiaries and to accept a transfer of the Medi-Cal Provider Agreements, provided that SGM does not incur any exposure for liability under the Medi-Cal Provider Agreements, or otherwise for any Medi-Cal Claims, or HQAF Claims, for goods and services provided, and otherwise for events related to periods, prior to SGM taking possession and control of the Hospitals, or to otherwise assume any obligations or liabilities of the Debtors other than those expressly provided for in the Purchase Agreement related to the SGM Sale.").

On September 26, 2019, the Bankruptcy Court entered its Memorandum of Decision in which it agreed with the Debtors contention that the Medi-Cal Provider Agreements could be transferred without compliance with Bankruptcy Code § 365(b). At the same time, the Court expressly acknowledged that APA Section 8.7 obligated the Debtors to transfer the Provider Agreements free and clear of any DHCS claims of liability. (Doc. No. 3146, 3) ("Each of the Hospitals has executed a Provider Agreement with DHCS. The Asset Purchase Agreement (the "APA") [Doc. No. 2305-1] which governs the sale of the Hospitals to SGM provides that the sale cannot close unless issues regarding alleged financial defaults existing under each Provider Agreement have been resolved.").

/ / /

Despite the Court's clear statement in its Memorandum of Decision that it was not deciding the recoupment issue, on October 8, 2019, the Debtors lodged a proposed order seeking to prevent Medi-Cal from recouping payments owed to SGM in connection with the transfer of the Medi-Cal Provider Agreements. Unsurprisingly, the next day, DHCS objected to the Debtors' proposed order, noting that "the proposed order is not 'consistent' with the Memorandum [of Decision] and that "it overreaches by inserting gratuitous terms, to, for example, prohibit the Department's recoupment after the sale." (Doc. No. 3330.)

On October 11, 2019, the Court agreed with DHCS that the Debtors' proposed order was overreaching, stating that: "the Memorandum Decision did not determine whether DHCS' recoupment rights against SGM (if any) are extinguished by the transfer of the Provider Agreements free and clear of claims, interests, and encumbrances." (Doc. No. 3372, fn. 2). When entering the Order on October 11, 2019, the Court deleted the word "recoup" from the section providing for a transfer of the Medi-Cal Provider Agreements free and clear of claims, and expressly stated that it was reserving the issue of DHCS's recoupment rights for future adjudication. (Doc. No. 3372.) The Court thus left open the question of whether the Medi-Cal Provider Agreements can be transferred free of recoupment rights. That issue has never been resolved.

Thus, as of the entry of the Court's October 11 order, the (1) Debtors had no "settlement agreement" with DHCS to satisfy the closing condition of § 8.7, and (2) the only Court order permitting the Debtors to transfer their the Medi-Cal Provider Agreements to SGM expressly left open DHCS' right to recoup from SGM payment for liabilities of the Debtors. Therefore, even if a court order could have substituted for the "settlement agreement" required by §8.7, there was no such court order.

In November, the Debtors became anxious, knowing that the end of the year was fast approaching and that SGM would have the option to walk away from the deal if the sale did not close before December 31, 2019. Given that the purchase price in the agreement was no longer a fair price for the Debtors' assets, in light of the colossal plunge in the financial performance of the hospitals, the Debtors also knew that they would not be able to negotiate a new agreement for the same or greater amount from SGM or any other potential buyers.

The Debtors knew the transaction was not in a position to close before year's end. There were numerous transactional issues that still needed to be resolved by the parties, including the resolution of hundreds of cure claims. The Debtors themselves had not satisfied all of the conditions precedent to closure, including § 8.7 of the APA. Nor had the Debtors confronted the regulatory issues raised by Hooper Lundy. (*See* November 22, 2019 letter of Gary Klausner, with attachments, submitted by the Debtors on November 26, 2019.)

Nevertheless, in a misguided effort to force a pre-December 31 closing or to manufacture a false claim for breach against SGM, the Debtors improperly and knowingly misrepresented the status of their performance in a November 20, 2019 letter to SGM, demanding that it close by December 5, 2019, and representing that, as of November 19, "all conditions to closing are satisfied." Of course, as of the date they sent the demand to close, the Debtors had not entered into the requisite settlement agreement with DHCS. Indeed, they still had not entered into any such agreement as of December 5, the date the Debtors set for closing.

On November 25, 2019, in tacit recognition of their failure to reach an agreement with DHCS, the Debtors sent SGM an email in which they contended that no settlement agreement was necessary, notwithstanding the clear and unambiguous language of § 8.7. The Debtors argued that the Bankruptcy Court's May 2, 2019 Sale Order satisfied the requirements of § 8.7 because the sale generally provided for it to be free and clear. However, as explained above, DHCS had objected to the sale and, to accommodate that objection, the Debtors agreed, and the Sale Order provided, that DHCS would reserve all of its rights pertaining to the assumption of the Medi-Cal Provider Agreement, including its right of recoupment. Accordingly, the Debtors' last-minute attempt to satisfy § 8.7's requirement of a settlement agreement providing for a full release and discharge in favor of SGM was unavailing.

C. The Bankruptcy Court's Decision, Reached without Notice or Hearing from SGM.

To help its cause, the Debtors sought the assistance of a Bankruptcy Court that understandably did not want to see the patients and employees of the hospitals suffer if this transaction fell apart. The Debtors managed to mislead this Court into believing that they had satisfied all conditions to closing as of November 19, 2019 – a contention that was proven false in

a matter of days. As a result of the Debtors' tactics, the Court entered its November 27 Order and accompanying memorandum of decision concluding that: (1) the Debtors' November 20 notice of closing was valid; and (2) all conditions to closing had been satisfied by the Debtors as of November 19, 2019, such that SGM was "obligated" to close the Sale on December 5, 2019 or be in breach, without even providing notice to SGM that it intended to adjudicate issues relating to the APA, with nothing pending regarding the sale and without providing SGM any meaningful opportunity to be heard.

In addressing the Debtors' compliance with § 8.7 as it related to the Medi-Cal Provider Agreements, in a footnote at the conclusion of its Memorandum, the Court stated that the Debtors had satisfied that condition by obtaining the October, 11, 2019 Order (Doc. 3372). However, as demonstrated above, that order had expressly reserved DHCS' right of recoupment, which was not compatible with the "full release" and "discharge" to which SGM was entitled under § 8.7. DHCS' right of recoupment remained unresolved through the December 5, 2019 "closing date."

To help push SGM to close a transaction that it was not otherwise required to close, the Court went so far as to summarily adjudicate any future lawsuit that might be initiated by SGM by stating that, "[h]ad SGM presented its allegations by way of an adversary complaint, it would dismiss such a complaint under Civil Rule 12(b)(6) for failure to state a claim upon which relief could be granted." (Doc. No. 3723, 6 fn. 4).

Even without getting to the merits of the Court's decision regarding the satisfaction of conditions, the November 27 order should be vacated on appeal for due process reasons alone.[2]

---

[2] It is black letter law that a court cannot make rulings that impair a party's rights without giving that party notice and an opportunity to be heard. *See, e.g., Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); *Tom Growney Equip., Inc. v. Shelley Irr. Dev., Inc.,* 834 F.2d 833, 835 (9th Cir. 1987) ("In the absence of extraordinary circumstances, procedural due process requires notice and an opportunity to be heard before any governmental deprivation of a property interest."). "It is equally fundamental that the right to notice and an opportunity to be heard 'must be granted at a meaningful time and in a meaningful manner.'" *Fuentes*, 407 U.S. at 80 (citation omitted). An order made without notice

D. The Debtors' Continued Misconduct.

The Debtors continued breaching the APA after their improper notice of closing. On December 6, 2019, the Debtors attempted to "weaponize" the Court's November 27 Order by filing an "emergency" motion for an Order to Show Cause which, if granted, would have required SGM and certain of its officers and counsel to appear in court and explain why SGM should not be found in contempt of the Court's November 27 Order for not closing the sale on December 5. And, notwithstanding the Debtors' breach of the APA, *inter alia*, by misrepresenting that they had satisfied all conditions to closing as of November 19 and creating a false narrative resulting in erroneous court orders, but following their artificial December 5 closing date, they refused to return SGM's good faith deposit in breach of § 11.2 of the APA, and terminated the APA without justification.

Although this Court's orders regarding the Debtors satisfaction of its closing conditions are on appeal, on January 3, 2020, the Debtors also initiated an adversary proceeding against SGM (the "Adversary Proceeding") for breach of contract and other related claims; all of which are founded on SGM's failure to close the sale on December as "obligated" by the Court's November 27 Order.

In a transparent attempt to harass, embarrass, and needlessly increase SGM's litigation costs, the Debtors also added a number of other defendants, including Dr. Kali P. Chaudhuri personally, based on a frivolous and unfounded alter-ego claim. As the Debtors freely concede in their own Complaint, SGM fully disclosed the details of the relationship between all of these various entities before the Debtors agreed to contract with just SGM. *See, e.g.* (Compl. ¶41.) In direct contradiction to their alter-ego allegations, the Debtors actually allege that they relied on

---

and opportunity to be heard is void. *In re Loloee*, 241 B.R. 655, 661 (B.A.P. 9th Cir. 1999); *see also In re Golden Plan of California, Inc.*, 829 F.2d 705, 712 (9th Cir. 1986) (holding district court's sua sponte consideration of a fraudulent conveyance issue rendered proceedings defective because investors were denied adequate notice); *In re Colortran, Inc.*, 218 B.R. 507, 511 (B.A.P. 9th Cir. 1997) (ruling that bankruptcy court's *sua sponte* order invalidating a creditor's lien without procedural safeguards afforded by the Bankruptcy Rules was void for lack of due process).

these representations regarding the relationship between these entities as the factual basis for their contrived fraud allegations. (Compl. ¶¶40-41.)[3]

After the appeals are resolved, SGM looks forward to fully and fairly litigating the Adversary Proceeding. Of course, SGM intends to assert its own claims, including for the Debtors' wrongful conversion of SGM's $30 million deposit.

III. ARGUMENT

A. Divestiture Is Mandatory in this Case, Regardless Whether the Rule Is Characterized as Jurisdictional Per Se or as Prudential.

The Debtors start off their Opposition by dramatically announcing that SGM has "ignore[d] recent Supreme Court precedent" in seeking a stay. *See* (Opp. at 1:12-2:9) (citing *Hamer v. Neighborhood Housing Servs. of Chicago*, 138 S.Ct. 13 (2017)). The Debtors' suggestion that SGM misstated the law to try to mislead this court is spurious. SGM did not cite *Hamer* because it has no bearing on this case.

Hamer discusses the nature of the rule concerning the deadline for filing a notice of appeal, and concludes the rule is a "mandatory claims-processing rule" rather than a jurisdictional rule. *Hamer*, 138 S.Ct. at 17. That is all. *Hamer* does not address the divestiture rule, nor does it say anything that would undermine the divestiture rule as stated in *Griggs* (which the Debtors dismiss as a "40 year old case"), namely that, "[t]he filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and *divests the district court of its control over those aspects of the case involved in the appeal*." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (emphasis added). The divestiture rule serves to avoid problems that arise when two courts are reviewing the same issue at the same time. *See id.*

---

[3] A party may not allege alter ego as a substitute for obtaining contractual guarantees from alleged alter-egos that it knew existed at the time of contracting. *E.g.*, *Lynch v. McDonald*, 155 Cal. 704, 704–05 (1909) (holding that a plaintiff cannot invoke the alter ego doctrine when it had knowledge of the existence of the defendant's principal but decided to contract solely with the entity defendant instead of or in addition to the principal).

In *Rodriguez v. County of Los Angeles*, 891 F.3d 776 (9th Cir. 2018), another case on which the Debtors rely (Opp. 2, 13, 15), the Court of Appeals *re-affirmed* the *Griggs* rule. *Rodriguez*, 891 F.3d at 790. The *Rodriguez* Court observed that the divestiture rule is not a *per se* jurisdictional rule but a prudential one – *i.e.*, a "mandatory claims-processing rule" like the rule at issue in *Hamer*. While the divestiture rule is not absolute, it *is mandatory* when (as here) a party asks the trial court to rule on issues that have been placed before a court of appeals. *Id.* at 790-91.

In *Ashker v. Cate*, 2019 WL 1558932 (N.D. Cal Apr. 2019), a third case on which the Debtors rely (Opp. 13, 14, 20), the district court granted a stay pending appeal on the ground that the issues the other party wanted it to decide were before the Ninth Circuit, which "divested [it] of jurisdiction." *Id*. at *4. The court explained that, as always, "district courts retain control of the aspects of the case that are not involved in the appeal," *e.g.*, attorney's fees decisions and the like. *Id*. at *3 (citations omitted). Otherwise, unless an appeal is "clearly defective or frivolous," the trial court must defer to the court of appeals when it comes to issues pending in that forum. *Id*.; *see Rodriguez*, 891 F.3d at 791.

In short, the Debtors' theatrics about the nature of the divestiture rule are a sideshow. They have no relevance, and were evidently included in the Opposition only to malign SGM.

B. The Appeals Divest this Court of Control Over the Issues in the Adversary Complaint, which Rests Its Allegations on the Orders on Appeal and Asks this Court to Decide Issues Pending in the District Court.

As discussed above, the 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." *Mercado-Guillen v. McAleenan*, 2019 WL 1995331, at *2 (N.D. Cal. May 6, 2019).

At base, the Debtors' Adversary Complaint seeks to hold SGM liable for "failing to consummate and close the Sale transaction in accordance with the APA[.]" (Compl. ¶ 100.) However, it is undisputed that SGM had no duty to close the Sale transaction until the Debtors had satisfied all conditions of the APA, including under Article 8. *See, e.g.*, *Atari Corp. v. Ernst & Whinney*, 981 F.2d 1025, 1029 (9th Cir. 1992) ("It is, of course, a basic principle of the common law of contracts that when a party's duty to perform under a contract is conditioned on the happening

of an event, the duty does not arise until the event occurs."). The Debtors' failure *vel non* to perform the conditions precedent set forth in the APA, including §§ 8.6 and 8.7, is exactly what the District Court must decide on appeal. The Bankruptcy Court cannot, therefore, adjudicate these issues without creating the risk of opposing outcomes. That is the very result the mandatory divestiture rule was designed to avoid. *Griggs*, 459 U.S. at 58.

The Debtors allege in their Complaint that they satisfied § 8.6 of the APA because they obtained an order from this Court stating that "the Debtors have complied with their obligation under the APA to obtain a final, nonappealable Supplemental Sale Order." (Compl. ¶ 83.) SGM has appealed both the November 14 and November 18 Orders concerning the alleged satisfaction of this condition, so the Orders cannot be used as grounds for relief in an Adversary Proceeding pending the outcome of the appeal.

The Debtors also allege in their Complaint that SGM breached the APA by "asserting entitlement to an "Evaluation Period when no such period existed after the entry of the Enforcement Order, Section 8.6 Order and the Closing Order [and] appealing the Enforcement Order to avoid its obligation to close and despite the APA's requirement that Defendants cooperate to render it a final, nonappealable order[.]" (Compl. ¶ 100.) The propriety of SGM's appeal is a question for the District Court, which has already denied all three of the Debtors' motions to dismiss the appeals, expressly rejecting the Debtors' waiver claim with respect to the November 14 Order. *See* (Klausner Decl. Ex. 1-3.)

The Debtors similarly attempt to rely on this Court's November 27 Order to support their allegations that SGM breached the APA: "Defendants also violated the Bankruptcy Court's orders requiring them to close the sale …." (Compl. 3:13); "The Court Orders SGM to Close By No Later Than December 5, 2019." (*Id*. at 30:26; Opp. at 12:4-7) (Order "finds that SGM is obligated to close the Sale pursuant to Section 1.3 of the APA because (i) the [VHS] had satisfied all conditions to closing, and (ii) SGM did not demonstrated that a Material Adverse Effect occurred under the Court's interpretation of the APA."). The Debtors also rely on the November 27 Order to allege that SGM "tortiously breached" [sic] the APA by "failing to consummate and close the Sale

/ / /

transaction in accordance with the APA," and by "making unfounded and untimely assertions of alleged Material Adverse Effects." (Compl. ¶ 107.)

Again, the merits and procedural propriety of this Court's November 27 Order are before the District Court; the Order cannot be used to bootstrap allegations in the Adversary Proceeding while the appeal is pending.

Any doubt as to the congruity of issues on appeal and issues to be resolved in the Adversary Proceeding is put to rest by the Debtors themselves, who repeatedly confirm it in their Opposition brief. *See, e.g.,* (Opp. 10) ("The Complaint asserts claims arising from SGM's conduct with respect to the APA and the SGM Sale, including breach of contract, promissory fraud, and tortious breach of contract based on SGM's and the other defendants' breaches of the implied covenant of good faith and fair dealing."); (Opp. 12) ("the facts giving rise to the Orders [on appeal] are indisputably pled in the Complaint independently of the Orders themselves").

C. SGM Had No Obligation (and No Reason) to Seek Stays of the Orders on Appeal.

The Debtors assert that the Court need not stay the Adversary Proceeding because SGM did not seek a stay of any of the appealed Orders. (Opp. 16:17-19.) This argument is a non-starter. The Orders from which SGM appealed are not enforceable orders; if they were, the Debtors would not be pressing ahead with their Adversary Proceeding in an attempt to obtain an enforceable damages order. Indeed, the Debtors themselves assert that the Court's orders were merely advisory in nature. (Opp. 19:3-5) ("[t]he [November 27] Order found that all other conditions to closing were satisfied and that SGM was obligated to close the Sale. The [November 27] Order *did not* compel SGM to close") (emphasis in original, internal citation omitted).

The Court's order denying VHS's Emergency Motion for an Order to show cause further confirms this when it states, "in 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." (Doc. No. 3783, 2.) (Of course such litigation would be hampered, if not fatally impaired, by the Debtors' attempt to use the Orders preclusively.)

/ / /

In short, SGM had no need to seek a stay until the Debtors filed their post-appeal Adversary Proceeding, which creates the prospect of two courts ruling on the same issues at the same time. In such instances, as discussed above, the divestiture rule *mandates* that the appeals court be able to complete its work before the lower court proceeds.

The Debtors' argument that the appeal is or will become moot because the Orders on appeal were not stayed is baseless. An appellant in a bankruptcy proceeding needs to seek and obtain a stay to prevent her appeal from becoming moot or "equitably moot," where, for example the money in the estate will be transferred to creditors pending the outcome of the appeal, leaving the appeal court with no practical means to afford the appellant the relief she seeks. *E.g.*, *Cobb v. City of Stockton (In re City of Stockton)*, 909 F.3d 1256, 1260 (9th Cir. 2018) ("[T]he complex [Chapter 9] plan has been confirmed, affecting the rights of thousands of creditors and the public. The reorganization has left the station. [Appellant] did not pursue any bankruptcy stay remedies, much less pursue them with the requisite diligence. The plan has long been substantially consummated. He offers too little, too late. Thus, his appeal must be dismissed."); *cf. In re Baker & Drake, Inc.*, 35 F.3d 1348, 1352 (9th Cir. 1994) (appeal was not equitably moot because "we are not faced with a situation in which we have the impossible task of putting Humpty Dumpty together again.").

The appeals in this case, by contrast, do not present such a scenario. The issues raised on appeal, which are mirrored in the Adversary Complaint (and which will be addressed in SGM's cross-complaint), involve nothing more than a contract dispute over who breached the APA and the appropriate remedy.

D. This Court Should Disregard the Debtors' Collateral Attacks on the Appeals and Their Efforts to Undermine the District Court's Jurisdiction.

Through their arguments regarding the appellate jurisdictional concepts of final/interlocutory orders, mootness, and waiver (the "Appellate Jurisdiction Issues"), the Debtors ask the Court to ignore the pendency of the Appeals and the "mandatory" nature of the divestiture rule so that the Adversary Proceeding can go forward and continue to conclusion.

First and foremost, issues regarding the District Court's jurisdiction to decide the Appeals should be decided by the District Court. *See, e.g.*, *In re Air Vermont, Inc.*, 47 B.R. 536, 537 (Bankr.

D. Vt. 1985) ("The determination as to whether the summary judgment ordered by this Court is an interlocutory order . . . is respectfully left for determination by the United States District Court."); *Tridyn Indus., Inc. v. American Mut. Ins. Co.*, 296 N.C. 486, 491 (1979) (state supreme court interpreting Rule 54(b), and opining "That the trial court declared it to be a final, declaratory judgment does not make it so . . . . Neither can a trial judge by denominating his decree a 'final judgment' make it immediately appealable under Rule 54(b) . . . if it is not such a judgment.").

The Appellate Jurisdiction Issues have either already been decided by the District Court or will be decided by the District Court in due course in the Appeals—whether *sua sponte*,[4] or in response to issues raised by the parties.

Specifically, with regards to the appeal of this Court's order of November 14, the District Court has already entered an order dated December 20, 2019 denying the Debtors' "emergency" motion to dismiss that appeal (based on *inter alia* waiver and standing grounds) on its merits (the "November 14 Appeal Dismissal Order"). In that Order, the District Court ruled that SGM "did not waive its right to appeal the order entered by the Bankruptcy Court by virtue of its joinder in the original motion for relief," and "has a pecuniary interest" in and thus standing to challenge the November 14 Order. A true and correct copy of the November 14 Appeal Dismissal Order is attached as **Exhibit "1"** to the Klausner Declaration.

With regard to SGM's appeal of this Court's orders of November 18 and 27, the District Court also entered orders denying the Debtors' "emergency" motions to dismiss those appeals (the "November 18 and 27 Appeal Dismissal Orders"). These motions were not filed until December 19, 2019 (requiring SGM to respond by December 26). Both motions sought dismissals of the

---

[4] *See id; Symantec Corp. v. Glob. Impact, Inc.*, 559 F.3d 922, 923 (9th Cir. 2009) (observing in the context of deciding whether an appealed order was final that "[a]lthough neither party raised the issue of our jurisdiction to entertain this appeal, we have a duty to consider it sua sponte."); *In re Burrell*, 415 F.3d 994, 997 (9th Cir. 2005) ("However, the [appellate] court has an independent obligation to consider mootness *sua sponte*.").

appeals of this Court's orders of November 18 and 27 on the grounds of judicial estoppel, the alleged interlocutory nature of the orders, and the alleged waiver of SGM's right to appeal. True and correct copies of the November 18 and 27 Appeal Dismissal Orders are attached as **Exhibits "2" and "3"** respectively to the Klausner Declaration.

Although it is uncertain whether the District Court will entertain and consider any further dismissal motions filed by the Debtors, given its denial of the three previous dismissal motions, the Debtors have made clear that they will ask the District Court again to dismiss the Appeals "as interlocutory and moot." (Opp. 17, n. 6) ([T]he *Debtors are preparing motions to dismiss the Appeals* as interlocutory and moot.") (emphasis added). *See also* (Committee Opp. 6:5-7) ("Committee may file a motion seeking to dismiss that appeal or otherwise present such an argument to the relevant time."). The Debtors rely on *Ruby v. Sec'y of the U.S. Navy*, 365 F.2d 385, 389 (9th Cir. 1996) to persuade this Court to disregard the Appeals, alleging that they are defective in some manner. *See* (Opp. 18.) The court in *Ruby*, while confirming the divestiture rule, determined that the lower court's jurisdiction had not been ousted from the appeal of an order dismissing a complaint against the "Secretary of the United states Navy to . . . legal, lawful and proper discharge or separation and or retirement . . . from the United States Navy," where the District Court subsequently entered an order "dismissing the action," which was not also appealed. *Id*. at 387. *Ruby* is factually distinguishable to this case in many ways — for example, SGM did, in fact, appeal the November 27 Order which determined the Closing Issue (defined below). "Moreover, the District Court not only has a *sua sponte* duty to determine its jurisdiction to decide the Appeals before it, but the Debtors have already conceded that these same Appellate Jurisdiction Issues in the Opposition will be raised again before the District Court in dismissal motions that will be filed in the near future. There is thus no need for this Court to determine the District Court's jurisdiction over the Appeals (even if such a determination were appropriate; it is not). Such a determination raises the prospect of conflicting and inconsistent findings and rulings by this Court and the District Court, resulting in confusion and an unnecessary waste of judicial and party resources. *U.S. v. Hickey*, 580 F.3d 922, 928 (9th Cir. 2009) ("Although the error was harmless in this case, we want to impress upon district courts that acting before the mandate has issued or after

the mandate has been recalled risks acting without jurisdiction and wasting judicial resources"); *see also id*. (citing *United States v. DeFries*, 129 F.3d 1293, 1301-03 (D.C. Cir. 1996) ("invalidating a trial which 'took several months, consuming thousands of hours of court and lawyer time' because the mandate had not issued before the trial began.").

Given the foregoing, it is unnecessary and improper for this Court to decide the issues related to the District Court's appellate jurisdiction over the Appeals. To avoid usurping the authority of the District Court, and the potential for conflicting rulings, this Court should defer any consideration of the "frivolous appeals" argument and await the outcome of the District Court's adjudication of these issues. These are all issues that have already been decided by the District Court, or will be decided by the District Court in due course. The most sensible and pragmatic approach – to avoid the waste of time, resources, inconsistency of findings/rulings – would be for this Court to stay the Adversary Proceeding.

E. The Orders Are Not Interlocutory.

Although questions about the District Court's jurisdiction over the Appeals should be left for that Court to decide, we address the Debtors' substantive contentions to show they are wrong.

The Debtors assert that a "final order is one that ends the litigation or disposes of a complete claim for relief, leaving nothing for the court to do but execute the judgment." (Opp. 18.) This assertion brazenly ignores the "pragmatic approach" applied in bankruptcy. As the United States Supreme Court has explained, "The ordinary understanding of 'final decision' *is not attuned to the distinctive character of bankruptcy litigation*. A bankruptcy case encompasses numerous "individual controversies, many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor." *Ritzen Grp., Inc. v. Jackson Masonry, LLC*, No. 18-938, 2020 WL 201023, at *2 (U.S. Jan. 14, 2020) (citing *Bullard*, 575 U.S. at 501). "It is thus common for bankruptcy courts to resolve discrete controversies definitively while the umbrella bankruptcy case remains pending." *Id*. In this context, "[d]elaying appeals from discrete, controversy-resolving decisions in bankruptcy cases would long postpone appellate review of fully adjudicated disputes," and "could require the bankruptcy court to unravel later adjudications rendered in reliance on an earlier

decision." *Id.*; *see also id.* at *3 ("*[T]he usual judicial unit for analyzing finality in ordinary civil litigation is the case, [but] in bankruptcy[,] it is [often] the proceeding.*") (emphasis added).

Unlike in an ordinary civil case where "a complete act of adjudication ends the litigation on the merits and leaves nothing for the court to do but execute the judgment," a bankruptcy court order is final if it "end[s] any interim disputes from which appeal would lie." *Slimick v. Silva (In re Slimick)*, 928 F.2d 304, 307 n.1 (9th Cir. 2007) (internal quotation marks and citations omitted). Therefore, a bankruptcy order is "final and thus appealable 'where it 1) resolves and seriously affects substantive rights and 2) finally determines the discreet issue to which it is addressed.'" *In re Bonham*, 229 F.3d 750, 761 (9th Cir. 2000).

The November 27 Order and accompanying memorandum decision unambiguously, and finally decided that "all conditions precedent to closing have been satisfied," and that "SGM is obligated to close the sale by no later than December 5, 2019." (Nov. 27 Memorandum Decision, Doc. 3723, 7). With respect to the Sale, after entry of the November 27 Order, there were no other Sale conditions left for the Court to interpret or rule on to obligate SGM to close the Sale. Nor was any matter or proceeding pending at the time of the Court's November 27 Order pertaining to the sale and, therefore, the November 27 Order was final.

The Debtors improperly conflate two distinct issues: (1) the matters pertaining to the closing of the Sale on December 5, 2019 (the "Closing Issue"), on the one hand; and (2) the matters pertaining to the breach of contract and other related claims by and between the Debtors, SGM, and other related parties (the "Breach Issue") on the other. The Debtors claim that the Orders regarding the "Closing Issue" are interlocutory, and that only after the "Breach Issue" is adjudicated will there be a "final order." That is wrong. The Closing Orders are final orders because they finally adjudicated the issue of the Debtors' satisfaction of all closing conditions and SGM's "obligation" to close on December 5. Furthermore, these orders were made outside the context of any pending matter so there was nothing to wait for before filing the notices of appeal.

Any argument by the Debtors that the Orders do not "seriously affect[] the substantive rights" of the parties should be rejected. *See Bonham*, 229 F.3d at 761. Although the Debtors conveniently define one of the Orders entered on 18, 2019 as the "Scheduling Order" in the

Opposition, the Debtors have themselves relied on each of the Orders to argue that SGM was obligated to close the Sale on December 5, 2019, and rely on them now to argue that SGM has breached the APA. These are not matters pertaining to "procedural convenience," or "disputes about how a bankruptcy case will unfold." *Ritzen*, 2020 WL 201023, at *5; *see Bonham*, 229 F.3d at 762 (concluding that a substantive consolidation order was final, and opining that "substantive consolidation is no mere instrument or procedural convenience . . . but a measure vitally affecting substantive rights."). Not only did the Orders "materially advance" the disputes related to the Closing Issue, they finally decided them on November 27, 2019.

In addition, the Debtors cite to a number of cases for the proposition that an order is not "final" for purposes of appeal unless it disposes of a pending matter in its entirety. *See* (Opp. 18) (" . . . final order is one that ends the litigation or disposes of a complete claim for relief, leaving nothing for the court to do but execute the judgment.") (citing *In re Kashani*, 190 B.R. 875, 882 (B.A.P. 9th Cir. 1995); *In re Travers*, 202 B.R. 624, 625 (B.A.P. 9th Cir. 1996)).

The fallacy of the Debtors' argument is that here, unlike in the cases the Debtors cite, there was no pending matter at the time the Court entered its November 18 Order (mischaracterized as a "Scheduling Order") or its November 27 Order (mischaracterized as the MAE Order). Indeed, the absence of any such pending proceeding, or fair notice and opportunity to be heard before the Court's entry of those two orders *sua sponte* is one of the primary reasons the Court's orders should be reversed. SGM could not have been required to await the outcome of the Adversary Proceeding in order to appeal, since the Adversary Proceeding had not yet been filed (and would not be filed until January 3, 2020), well after the time for filing appeals expired. Indeed, the Debtors makes this very point when they state:

> As such, although the Scheduling Order and MAE Order interpreted the APA with respect to the conditions to closing, the Orders did not 'finally determine a cause of action' raised in the Adversary Proceeding particularly given that the APA did not provide for specific performance as a remedy.

(Opp. 19: 16-20.)

/ / /

The absence of specific performance as a remedy for the Debtors is irrelevant. The Debtors are suing for money damages for breach of contract; and the Court's Orders purported to determine that SGM would be in breach, and, therefore liable for money damages, if it did not close on December 5.

Lastly, the Debtors' statement "that SGM failed to seek leave to appeal the interlocutory order and cannot satisfy standards for leave to appeal" is not properly before this Court. The District Court, if necessary and in its discretion, can "consider the notice of appeal as a motion for leave to appeal." *In re Stewart*, 157 B.R. 893, 895–96 (B.A.P. 9th Cir. 1993) ("Interlocutory orders are not appealable as of right . . . . Nevertheless, the Panel may consider the notice of appeal as a motion for leave to appeal. Fed.R.Bankr.P. 8003(c)[.]").

If SGM is not permitted to appeal those rulings, then SGM will be subject to the Debtors' arguments that these Orders are preclusive on those very issues, *i.e.* the Debtors will claim that SGM would not have the right to litigate those issues in defending the Debtors' Complaint. Simply stated, the Debtors cannot have it both ways; it cannot obtain definitive rulings on issues relating to its satisfaction of conditions and SGM's obligation to close the APA before filing suit, and then, when a suit has been filed, argue that SGM's timely appeals from those Orders must be dismissed because they were filed prematurely.

F. The Appeals Are Not Moot.

In another attempt to curtail SGM's rights, the Debtors argue that the Appeals are moot because the APA has been terminated and a Sale is no longer possible. (Opp. 20); *see also* (Opp. 22-23) ("obtained orders . . . authorizing . . . alternative transactions . . . approving the disposition milestones in connection with continued use of cash collateral . . . . authorizing the closure of SVMC[.]").

This argument is both contradictory and illogical. The Debtors argue on the one hand that this "Court is entitled to rely upon the narrow findings of the unstayed Orders in the Adversary Proceeding to the extent they have any collateral value to those claims asserted in the Complaint," (Opp. 17:9-11) and on the other that these "Orders are no longer of any practical force or effect."

(Opp. 23:3-4.) Just as with the Debtors' attempt to argue that the Orders are interlocutory, the Debtors again mistakenly conflate two distinct issues: (1) the ability of the Sale to close under the APA; and (2) the dispute over which party breached the APA.

The termination of the APA, and the start of the alternative disposition mechanism have nothing to do with whether the Debtors had satisfied their closing conditions as of November 19, 2019, or whether SGM was obligated to close the sale on December 5, 2019.[5]

A "party asserting mootness 'has the heavy burden of establishing that there is no effective relief remaining for a court to provide.'" *In re Nelson*, 391 B.R. 437, 444-45 (B.A.P. 9th Cir. 2008). "The classic example of mootness in the bankruptcy context is a case in which the debtor has failed to seek a stay of foreclosure and the debtor's property has been sold" or where "a party opposing a reorganization plan has failed to obtain a stay pending appeal, and the plan has been carried out to 'substantial culmination.'" *In re Baker & Drake, Inc*, 35 F.3d 1348, 1351 (9th Cir. 1994). Even under these circumstances, "failure to obtain a stay, standing alone, is often fatal but not necessarily so; nor is the 'substantial culmination' of a relatively simple reorganization plan." *Id*.

Here, there are no disputed sale or confirmation orders that would generally necessitate stays of such orders to avoid collateral effects. Moreover, as described above, there was no obligation or reason for SGM to seek stays of the Orders until the Adversary Proceeding was filed.

As described in the Motion and above, even a cursory perusal of the Complaint demonstrates the degree to which the Adversary Proceeding overlaps with the challenged rulings. For example, Plaintiffs allege that SGM breached the APA by, *inter alia*: (1) "asserting entitlement to an 'Evaluation Period' when no such period existed after the entry of the Enforcement Order [the November 14 Order], the Section 8.6 Order [the November 18 Order] and the Closing Order [the November 27 Order]"; "appealing the Enforcement Order [the November 14 Order] to avoid

---

[5] SGM does not concede that the Debtors' termination of the APA on December 27, 2019 was lawful, which is an issue that will be resolved in the litigation.

its' obligation to close and despite the APA's requirement that Defendants cooperate to render it a final, nonappealable order"; and "filing meritless and frivolous Notices of Appeal." (Compl. ¶ 100). A plain and fair reading of the Complaint compels the conclusion that all of these claims rely heavily on the Court's findings in the Orders. As a result, the Debtors' representation that the "Orders are no longer of any practical force or effect" is, at best, mistaken and, at worse, a contradictory and disingenuous statement intended to create confusion. *See* (Opp. 23).

The Debtors' attempt to use them as a sword against SGM and non-SGM defendants in the Adversary Proceeding shows that these Orders have continuing legal effect, and the Appeals are not moot.

G. SGM Did Not Waive Its Right to Appeal.

The Debtors' next argument that SGM "waived its appellate rights with respect to the Scheduling Order and MAE Order" should likewise be rejected.[6] Waiver is the "*intentional* relinquishment or abandonment of a known right." *Hamer*, 138 S. Ct. at 17 (internal citations and quotations omitted, emphasis added); *see also Point Center*, 890 F.3d at 1193. The Debtors have failed to provide any evidence to show that SGM intentionally waived, or gave up its right to appeal any of the Orders. *See, e.g.*, *U.S. v. Gomez*, 757 F.3d 885, 893 (9th Cir. 2014) (in the appeal arising from a removal proceeding, opining that "[t]he government bears the burden of proving valid waiver in a collateral attack of the underlying removal proceedings.'").

Nor can the Debtors show there was any "express" waiver of SGM's right to appeal the November 18 and 24 Orders. SGM's execution of the APA and agreement to be bound by Sections 9.1(c) and 12.3 of the APA do not constitute waiver. Neither Section addresses the right to appeal.

---

[6] Presumably, the Debtors do not argue in the Opposition that SGM waived its right to appeal the November 14 order because the District Court has already rejected this argument in the November 14 Appeal Dismissal Order.

In addressing "express" waiver issues in the context of appeal rights, courts routinely and consistently require that the document relied upon by the party claiming waiver contain specific and clear language addressing the waiver of one party's right to appeal. *See e.g.*, *Project B.A.S.I.C. v. O'Rourke*, 907 F.2d 1242, 1244 (1st Cir. 1990) ("BASIC suggests that appellants expressly *waived* any objection to the 'time schedule' order in a brief submitted to the district court . . . [by] *not only* fail[ing] to complain . . . *but also* said they would comply with that order. To be specific, PHA, in its opposition to BASIC's motion for reconsideration, stated that, the [district] Court has ordered the replacement housing to be constructed within twenty-three (23) months, *which PHA fully intends to do . . . . This statement, however, was merely a single, isolated sentence appearing in an opposition brief that made no reference whatsoever to the possibility of appellate review.* Consequently, we cannot treat it as a waiver of the PHA's right to appeal.") (emphasis added); *In re Deepwater Horizon*, 785 F.3d 986, 997 (5th Cir. 2015) (declining to find waiver of right to appeal, and opining that "where a settlement agreement does not resolve claims itself but instead establishes a mechanism pursuant to which the district court will resolve claims, parties must *expressly waive what is otherwise a right to appeal from claim determination decisions by a district court*. Given that there has been no such express waiver in the instant case, the parties have preserved their right to appeal from the district court to this court.") (emphasis added); *DeLoach v. Lorillard Tobacco Co.*, 391 F.3d 551, 559 (4th Cir. 2004) (denying motion to dismiss appeal on waiver grounds, and opining that "Indeed, § 12.4(c) *does not include any 'non-appealability' language. Accordingly, we deny the Class's motion to dismiss the appeal based on the contractual language of . . . the First Settlement Agreement*.") (emphasis added); *U.S. v. International Broth. Of Teamsters*, 905 F.2d 610, 615 (2d Cir. 1990) (declining to find waiver of right to appeal, because "[s]uch a clear and unmistakable intent is not present here, since the phrase 'exclusive jurisdiction,' read in the context of the Consent Decree, does not unambiguously exclude appellate review . . . . *Nothing in the Consent Decree indicates that the parties intended to waive their right to invoke the jurisdiction of this court*. Moreover, the government conceded at oral argument that the availability of appellate review was never discussed in the course of negotiations.") (emphasis added).

Here, the Debtors have failed to point to any clear and specific language in the APA that even mentions SGM's appeal rights. All but one of the cases cited by the Debtors in Section III.C.4 of the Opposition involve contractual waivers that explicitly addressed and provided for the waiver appellate rights. *See e.g.*, *U.S. Consol. Seeded Raisin Co. v. Chaddock & Co.*, 173 F. 577, 578 (9th Cir. 1909) (agreement provided that " . . . judgment . . . shall be final, and shall not be appealed"); *The Minesen Co. v. McHugh*, 671 F.3d 1332, 1339 (Fed. Cir. 2012) (agreement stating "no rights of appeal to any forum"); *Slattery v. Ancient Order of Hibernians in America, Inc.*, 1998 WL 135601, *1 (D.C. Cir. 1998) (stipulation stated that "parties agree not to appeal any decision"); *In re Lybarger*, 793 F.2d 136, 138 (6th Cir. 1986) (consent decree stated that "parties waive all rights of appeal and further review"); *Brown v. Gillette Co.*, 723 F.2d 192, 192 (1st Cir. 1983) (agreement stipulated that "waive any and all rights of appeal").

The remaining case, *In re Odyssey Contracting Corp.*, No. 19-1150, 2019 WL 6766985 (3d Cir. Dec. 12 2010), is also distinguishable. There, the parties stipulated that "all of the Parties' pending claims will be withdrawn and disposed of in their entirety with prejudice" and "[i]n the event the Court determines after trial that Odyssey was the breaching party . . . *and this proceeding shall be deemed to be finally concluded in all respects*." *Id.* at 488 (emphasis in original). Unlike in *Odyssey* where it was the clear intent of the parties "to resolve and end the litigation based on the Court's determination of a contested issue," *id.* at 489, the language at issue here was drafted at the time the APA was executed, before there was any litigation. *Id.* The "exclusively settled" and "sole judicial forum" language in Sections 9.3(c) and 12.3 of the APA simply provides the forum in which disputes arising under the APA would take place. Nothing in either section can reasonably be interpreted to mean that the parties were waiving their right to appellate review, let alone due process.[7]

---

[7] SGM's due process rights were violated when, without any advance notice to SGM that it intended to adjudicate any issue pertaining to the Sale, and without providing SGM with any opportunity to

The APA does not address waiver of any of the parties' rights to appeal, nor does it evince SGM's intent to have this Court finally determine all disputes related to the APA without appellate review. The right to appeal the Orders was not waived, and they are now properly on appeal before the District Court. Because the District Court has jurisdiction over the Appeals, the Adversary Proceeding (concerning the same or related issues addressed in the Appeals) should be stayed.

H. The Committee's Opposition Should Be Stricken or Ignored.

SGM need not address the Committee Opposition because the Committee: (1) is not a party to the Adversary Proceeding, (2) has not sought or obtained Court permission to intervene in the Proceeding, and (3) has no standing to participate in the Proceeding or related disputes. *In re Latimer*, 918 F.2d 136, 137 (10th Cir. 1990) (holding that "debtor had no standing, due to his failure to move to intervene in this adversary action."); *In re Altman*, 265 B.R. 652, 655 (Bankr. D. Conn. 2001) ("creditors do not have an automatic right to intervene in adversary proceedings").

Any argument by the Committee that it has an automatic right to be heard in the Adversary Proceeding (as opposed to the Debtors' main bankruptcy case) pursuant to Section 1109(b) of the Bankruptcy Code should be rejected as misinformed. That Section states that "[a] party in interest . . . may raise and may appear and be heard on any issue in a *case* under this chapter." 11 U.S.C. § 1109(b) (emphasis added). An adversary proceeding is not a "case" in bankruptcy: "Congress has consistently drawn a distinction between bankruptcy 'cases' and 'adversary proceedings' . . . . [and] intended to differentiate between them in the context of intervention . . . . [We] conclude that

---

be heard through the filing of briefs or otherwise, this Court entered the: (1) November 18 Order (granting the Debtors' motion for a continuance of the disclosure statement hearing) which nullified the Evaluation Period, and determined that the Debtors had satisfied the conditions set forth in Section 8.6 of the APA; and (2) November 27 Order (following the status conference, and hearing to continue the disclosure statement hearing) finding, among other things, that all conditions to closing had been satisfied by the Debtors, such that SGM was "obligated" to close the sale on December 5, 2019.

§ 1109(b) does not grant an unconditional right to intervene in adversary proceedings under Rule 24(a)(1)." *In re Catholic Bishop of N. Alaska*, No. ADV F08-90019-DMD, 2009 WL 8446700, at *2 (Bankr. D. Alaska Mar. 25, 2009) (emphasis added). The Committee Opposition should thus be stricken or simply ignored.

IV. CONCLUSION

For all of the foregoing reasons, and the reasons stated in the Motion, the Adversary Proceeding and all matters relating to the Adversary Proceeding, including the filing of any responsive pleading or compliance with this Court's Scheduling Order of January 6, 2020, should be stayed pending final resolution of the consolidated Appeals.

Dated: February 5, 2020

By: */s/ Gary E. Klausner*
Gary E. Klausner
Counsel for Strategic Global Management, Inc.;

DECLARATION OF GARY E. KLAUSNER

I, Gary E. Klausner, declare as follows:

1. I am over 18 years of age. I have personal knowledge of the facts set forth below and, if called to testify, would and could competently testify thereto.

2. I am a partner of Levene, Neale, Bender, Yoo & Brill L.L.P. ("LNBYB"), bankruptcy counsel for Strategic Global Management, Inc. ("SGM"). I am licensed to practice law in the State of California and before this court.

3. I submit this Declaration in support of the foregoing Reply. Unless otherwise indicated, all capitalized but undefined terms herein shall have the same meanings ascribed to them in the Motion.

4. On December 20, 2019, the District Court entered an order denying the Debtors' "emergency" motion to dismiss the appeal of the November 14 Order on its merits (the "November 14 Appeal Dismissal Order"). A true and correct copy of the November 14 Appeal Dismissal Order is attached as **Exhibit "1"** hereto.

5. In addition, the District Court subsequently entered orders denying the Debtors' "emergency" motions to dismiss the appeals of the November 18 and 27 Orders (the "November 18 and 27 Appeal Dismissal Orders"). True and correct copies of the November 18 and 27 Appeal Dismissal Orders are attached as **Exhibits "2" and "3"** respectively hereto.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed February 5, 2020, at Los Angeles, California.

/s/ Gary E. Klausner
GARY E. KLAUSNER

EXHIBIT 1

Case 2:19-cv-10352-DSF Document 28 Filed 12/20/19 Page 1 of 8 Page ID #:2412

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al. Debtors.	CV 19-10352 DSF Order DENYING Emergency Motion to Dismiss Appeal (Dkt. No. 2); Order GRANTING Motion to be Named as Appellee (Dkt. No. 11)

Appellant Strategic Global Management, Inc. has appealed an order of the Bankruptcy Court acknowledging that a certain sale of hospital assets is free and clear from certain requirements that the Attorney General of California wished to impose. Debtors have moved to dismiss the appeal due to waiver and lack of standing.[1]

It is questionable whether any exigency exists that could be meaningfully resolved by dismissal of this appeal. Appellant may or may not close the relevant transaction in a timely fashion. If it doesn't, Debtors may or may not run out of operating cash. The existence of a pending appeal at the time the deal falls through may be relevant to

[1] Because it is a party in interest that actively took part in the proceedings below, the Creditors' Committee's motion to be named as an appellee is GRANTED. But regardless of its right to intervene, the Court declines to consider any additional arguments raised by the Creditors' Committee in its joinder filed on December 17. December 17 was the deadline for Appellant to respond to the emergency motion to dismiss. The Court will not consider substantive arguments to which the Appellant had no opportunity to respond.

sorting out the legal responsibilities of the various parties somewhere in the future, but dismissal of the appeal would not force Appellant to close or cause cash to appear in the Debtors' accounts. Nonetheless, the Court will decide the motion now given that the matter has been briefed and the Court is ruling in favor of the party that opposes the emergency treatment of the motion.

Appellant did not waive its right to appeal the order entered by the Bankruptcy Court by virtue of its joinder in the original motion for relief. Waiver is the "intentional relinquishment or abandonment of a known right." Hamer v. Neighborhood Hous. Servs. of Chicago, 138 S.Ct. 13, 17 n.1 (2017). Appellant (presumably) agreed with the arguments made in Debtors' original motion and the Bankruptcy Court issued an extensive opinion agreeing with the arguments made in that motion. Appellants do not appeal that. Instead, they appeal the final order later entered by the Bankruptcy Court that was a product of an explicit compromise between Debtors and the Attorney General and that did not necessarily provide the entirety of relief requested in the motion. That compromise and order also resulted in the original opinion being vacated. There is no question that Appellants vigorously opposed the entry of the order and claimed that it did not provide them with the protection sought in the motion and to which they are entitled. While Appellants' arguments may ultimately turn out to be meritless, they did not waive the right to appeal an order that allegedly does not provide the result they had joined in seeking.

A party "aggrieved" by an order of a bankruptcy court generally has standing to appeal that order. "An appellant is aggrieved if directly and adversely affected pecuniarily by an order of the bankruptcy court; in other words, the order must diminish the appellant's property, increase its burdens, or detrimentally affect its rights." In re P.R.T.C., Inc., 177 F.3d 774, 777 (9th Cir. 1999) (internal quotation marks omitted). The premise of the appeal is that the order entered by the Bankruptcy Court does not provide the relief Appellant is entitled to as the prospective purchaser of assets from the Debtors. Appellants claim that the deficiencies in the order could expose them either to liability from an action by the Attorney General or to a reduced value of the

assets if the Attorney General asserts the existence of certain obligations on the holder of the assets in the future. Again, these arguments may ultimately be found to be substantively meritless, but Appellant has a pecuniary interest in that determination.

Debtors' assertion that generally a prevailing party has no standing to challenge the language of the lower court decree is incorrect. First, it is clear if a party that receives only some of what it sought, it is entitled to appeal. Forney v. Apfel, 524 U.S. 266, 271 (1998). In its view, Appellant only received part of what it sought or, alternatively, the ambiguity of the Bankruptcy Court's order rendered its purported victory illusory. Debtors' assertions to the contrary are its position on the substance of the appeal – that the order entered by the Bankruptcy Court was sufficient and everything Appellant wanted. In that sense, Debtors' standing argument begs the entire question posed by the appeal. In addition, language contained in an appealable decree – usually the judgment – has long been held to be subject to reformation on appeal by the prevailing party. See Envtl. Prot. Info. Ctr., Inc. v. Pac. Lumber Co., 257 F.3d 1071, 1075 (9th Cir. 2001) (citing Elec. Fittings Corp. v. Thomas & Betts Co., 307 U.S. 241, 242 (1939)). The relevant limitation is that "[a] party may not appeal from a judgment or decree in his favor, for the purpose of obtaining a review of findings he deems erroneous which are not necessary to support the decree." Elec. Fittings Corp., 307 U.S. at 242. This is an appeal of the direct applicable language of the appealable decree, not an appeal for a review of unnecessary findings.

The motion to dismiss is DENIED.

IT IS SO ORDERED.

Date: December 20, 2019

Dale S. Fischer

Dale S. Fischer
United States District Judge

EXHIBIT 2

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al. Debtors.	CV 19-10354 DSF CV 19-10356 DSF Order DENYING Emergency Motions to Dismiss

The emergency motions to dismiss are DENIED. The Court will not consider on an emergency basis two motions filed after hours on December 19, almost two weeks after the filing of the notices of appeal. The motion to dismiss in the related appeal, CV 19-10352, was filed on December 10. A further nine-day delay in filing the other two motions to dismiss is unreasonable, especially when filing on December 19 puts the deadline for opposition on December 26.

IT IS SO ORDERED.

Date: December 20, 2019

Dale S. Fischer

Dale S. Fischer
United States District Judge

EXHIBIT 3

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

In re VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al. Debtors.	CV 19-10354 DSF CV 19-10356 DSF Order DENYING Emergency Motions to Dismiss

The emergency motions to dismiss are DENIED. The Court will not consider on an emergency basis two motions filed after hours on December 19, almost two weeks after the filing of the notices of appeal. The motion to dismiss in the related appeal, CV 19-10352, was filed on December 10. A further nine-day delay in filing the other two motions to dismiss is unreasonable, especially when filing on December 19 puts the deadline for opposition on December 26.

IT IS SO ORDERED.

Date: December 20, 2019

Dale S. Fischer
United States District Judge

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 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **REPLY TO OPPOSITIONS TO "STRATEGIC GLOBAL MANAGEMENT, INC.'S . . . 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 **February 5, 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;Isabella.hsu@dentons.com;lee.whidden@dentons.com;Jacqueline.whipple@dentons.com
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL: On **February 5, 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 **February 5, 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.

Served via Attorney Service
The Honorable Ernest M. Robles
United States Bankruptcy Court
Edward R. Roybal Federal Building
255 E. Temple Street, Suite 1560
Los Angeles, CA 90012

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

February 5, 2020	Lisa Masse	*/s/ Lisa Masse*
Date	*Type Name*	*Signature*