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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

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

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☐ Affects O'Connor Hospital Foundation ☐ Affects Saint Louise Regional Hospital Foundation ☐ Affects St. Francis Medical Center of Lynwood Foundation ☐ Affects St. Vincent Foundation ☐ Affects St. Vincent Dialysis Center, Inc. ☐ Affects Seton Medical Center Foundation ☐ Affects Verity Business Services ☐ Affects Verity Medical Foundation ☐ Affects Verity Holdings, LLC ☐ Affects De Paul Ventures, LLC ☐ Affects De Paul Ventures - San Jose Dialysis, LLC, Debtors and Debtors-in-Possession.	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
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 **DEFENDANTS' NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT [Fed. R. Civ. Proc. 12(b)(6)]** Date: August 10, 2020 Time: 1:30 p.m. Judge: Dale S. Fischer Place: Courtroom 7D 350 West 1st Street Los Angeles, CA 90012

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on August 10, 2020 at 1:30 p.m., or as soon thereafter as the matter may be heard in Courtroom 7D of the above-entitled Court, located at 350 West 1st Street, Los Angeles, CA 90012, pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants Strategic Global Management, Inc. ("SGM"), Kali P. Chaudhuri, M.D., KPC Healthcare Holdings, Inc., KPC Health Plan Holdings, Inc., KPC Healthcare, Inc., and KPC Global Management, LLC, (collectively, "Defendants"), will and hereby move this Court for an order dismissing the First Amended Complaint filed by Plaintiffs Verity Health System of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center, and Verity Holdings, LLC's ("Plaintiffs") in the above-referenced adversary proceeding for numerous reasons.

All of Plaintiffs' claims should be dismissed because Plaintiffs failed to satisfy at least two contractual conditions to SGM's obligation to close the transaction at issue. Notably, Plaintiffs cannot show that they satisfied the conditions precedent set forth in sections 8.6 or 8.7 of the parties' Asset Purchase Agreement ("APA").

In addition, Plaintiffs' second cause of action for promissory fraud also fails because: (1) Defendants' alleged false promise was made in connection with the bankruptcy proceeding and is thus protected by the litigation privilege (Cal. Civ. Code. §47(b)) and (2) Plaintiffs' own allegations negate their fraud theory.

Plaintiffs' two claims for tortious breach of contract (counts IV and V) also fail for the additional and independent reason that California law does not recognize a claim for "tortious breach of the implied covenant of good faith and fair dealing" in arms-length transactions such at the contract here.

This motion is based upon this Notice and attached Memorandum of Points and Authorities, the concurrently filed Request for Judicial Notice, the pleadings

and records on file herein, and on such other and further argument and evidence as may be presented at the time of the hearing and all additional matters of which this Court may take judicial notice. Pursuant to Local Rule 7-3, this motion is made following the conference of counsel, which took place telephonically between counsel in multiple calls between March 18 and March 23, 2020.

Dated: July 10, 2020

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By:/s/Gary E. Klausner
Gary E. Klausner

Dated: July 10, 2020

BARNES & THORNBURG LLP

By:/s/ Joel R. Meyer
Joel R. Meyer

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

SIGNATURE ATTESTATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, Joel R. Meyer, attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Dated: July 10, 2020

/s/ Joel R. Meyer
Joel R. Meyer

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 20, 2019, Plaintiffs sent a letter to SGM demanding that SGM close the sale set forth in the parties' Asset Purchase Agreement ("APA") on December 5, 2019 based on Plaintiffs' representation that they had satisfied all of the APA's conditions to SGM's obligation to close. On December 17, 2019, Plaintiffs gave notice that they were terminating the APA because SGM did not close the transaction on December 5, 2019. All of Plaintiffs' claims against SGM depend on Plaintiffs first being able to establish that they satisfied the conditions to SGM's obligation to close. As demonstrated below, Plaintiffs' allegations and the procedural history of this dispute[1] shows that Plaintiffs failed to satisfy at least *two* contractual conditions to SGM's performance before wrongfully demanding that SGM close the sale.

First, Plaintiffs cannot establish that they satisfied the condition in APA Section 8.6 for reasons including they failed to obtain a "final, non-appealable" Supplemental Sale Order stating that the transaction could close without the "additional conditions" imposed by the California Attorney General ("AG") before making their closing demand on November 20, 2019. The Supplemental Sale Order, which the bankruptcy court entered on November 14, 2019, was not "final and non-appealable" as of November 20, 2019 because, as of that date, the time for appeal had not expired. Indeed, SGM timely appealed the November 14 Order and the appeal was not resolved until at least June 10, 2020, when this Court vacated that order.

Second, Plaintiffs also did not satisfy the condition in APA Section 8.7. In Defendants' motion to dismiss Plaintiffs' original complaint, Defendants demonstrated that Plaintiffs' demand letter was improper because Plaintiffs had not

[1] Defendants have concurrently filed a request for judicial notice of the relevant pleadings and record from this matter.

obtained from the California Department of Health Care Services ("DHCS") a "settlement agreement" which released and discharged SGM from all potential DHCS claims against Plaintiffs. Plaintiffs responded by amending their complaint to add a new theory – namely, that they actually complied with section 8.7 on *December 9, 2019*, which was 20 days after Plaintiffs had represented that they had satisfied the § 8.7 condition and demanded that SGM close on December 5. Although Plaintiffs never noticed any new closing date on or after December 9, they now allege that SGM breached the APA by not closing within 10 business days of December 9, 2019. Plaintiffs' newly-minted breach theory is no more viable than their original theory. Most notably, on December 17, 2019 – i.e., well before the expiration of ten business days following December 9 – Plaintiffs gave notice that *they* were terminating the APA based expressly on Defendants' alleged breaches that they claimed occurred *on or before December 5, 2019*. Having terminated the contract based on the alleged failure to close on December 5, Plaintiffs cannot now claim that SGM was obligated to close on some unspecified future date, after they noticed the APA's termination.

In short, because Plaintiffs failed to satisfy all conditions to close before they gave their only demand to close on November 20, 2019, the entire FAC must be dismissed.

Plaintiffs' second cause of action for promissory fraud fails for two separate and additional reasons. First, Defendants' alleged false promise was made in connection with the bankruptcy proceeding and is thus protected by the litigation privilege (Cal. Civ. Code. §47(b)).

Second, even if the alleged false promise was not privileged (it is), Plaintiffs' fraud claim fails because Plaintiffs' own allegations negate their fraud theory. Plaintiffs contend that Defendants intended to breach the contract at the time SGM entered it. (FAC ¶ 115.) At the same time, Plaintiffs expressly allege to the contrary that Defendants made a mistake in judgment. Specifically, Plaintiffs allege that

Defendants erroneously believed Plaintiffs would not satisfy the closing conditions: "SGM had concluded that the APA imposed conditions that the Plaintiffs could never satisfy (i.e., conditions to closing)." (FAC ¶ 58.) Further, Defendants "never anticipated" that Plaintiffs would satisfy the conditions in the contract and "believed they would never be obligated to pay the full purchase price." (*Id.*) If true these allegations only demonstrate that Defendants merely had the *opinion* they would never be obligated to pay the full purchase price, as opposed to a belief that they would be obligated and the *intention* to breach that obligation. Defendants' alleged mistake in judgment does not support a fraud claim.

Finally, Plaintiffs' two claims for tortious breach of contract (counts IV and V of the FAC) fail for the additional and independent reason that California law does not recognize a claim for "tortious breach of the implied covenant of good faith and fair dealing" in arms-length transactions such at the contract here. *Pension Tr. Fund for Operating Engineers v. Fed. Ins. Co.,* 307 F.3d 944, 955 (9th Cir. 2002).

Because Plaintiffs have not been able to plead a viable claim after two attempts, Defendants request that the Court dismiss Plaintiffs' FAC with prejudice.

II. PLAINTIFFS' ALLEGATIONS AND PROCEDURAL HISTORY

A. The Asset Purchase Agreement

Plaintiffs filed a bankruptcy petition on August 31, 2018 and instituted a process to sell substantially all of their assets including their six California hospitals. FAC ¶ 37.

Plaintiffs eventually agreed to enter into an APA with SGM to sell four of their hospitals to SGM. FAC, Exh. A ("APA"). The APA was subject to numerous conditions that would need to be satisfied before SGM would become obligated to close. Some examples include:

- If Plaintiffs found a buyer(s) whose bid was higher than SGM's, they could elect to sell the assets to the other buyer(s), thereby canceling the

APA (APA § 6.1);

- The APA was subject to bankruptcy court approval (APA §§ 7.6 & 8.2);
- The sale was subject to the AG's approval without the imposition of conditions that SGM had not agreed to accept (APA § 8.6); and
- Plaintiffs had to reach settlement agreements with CMS and DHCS that would allow the transfer of Plaintiffs' Medicare and Medi-Cal provider agreements free and clear of all potential future claims and fully discharge and release SGM (APA § 8.7).

Upon execution of the APA, SGM made a "good faith deposit" of $30 million that was to be held pending the closing of the transaction (APA § 1.2).

B. Defendants' Alleged Mindset When Agreeing to the APA

According to the FAC, Defendants believed that Plaintiffs would never be able to satisfy the conditions in the APA, so they would never be obligated to close at the price set forth in the agreement. (FAC. ¶59.) Plaintiffs allege:

> Plaintiffs are informed and believe that SGM had concluded that the APA imposed conditions that the Plaintiffs could never satisfy (i.e., conditions to closing). In particular, it now appears that Defendants never anticipated that Debtors would obtain agreement from the Attorney General of California not to impose conditions on the sale transaction that materially differed from the conditions SGM developed and agreed to in Section 8.6 and Schedule 8.6 of the APA. Rather, Defendants believed they would never be obligated to pay the full purchase price (comprised of a cash payment $610 million, plus cure costs and assumption of liabilities) and instead concluded they would eventually be positioned to either walk away from the transaction or coerce the Debtors into a re-trade at a significantly lower purchase price. (FAC at Preliminary Statement.)

C. SGM Appeals the Bankruptcy Court's Ruling Regarding the AG's Conditions

APA § 8.6 required Plaintiffs to obtain a "final, non-appealable" Supplemental Sale Order finding that the transfer of Plaintiffs' assets to SGM was

free and clear of Additional Conditions, *i.e.* conditions imposed by the AG in addition to those on which the parties had agreed, as listed in APA Schedule 8.6. (APA § 8.6.)

On September 25, 2019, the AG consented to the SGM sale, but included conditions that were "materially different" than those SGM agreed to in the APA. (FAC ¶ 72.) On October 23, 2019, the bankruptcy court issued a memorandum of decision finding that the materially different conditions the AG had imposed were not enforceable under the Bankruptcy Code. (*Id.* ¶ 73.) After this ruling, Plaintiffs and the AG reached a stipulated settlement, wherein the AG waived its rights to appeal the bankruptcy court's ruling if the bankruptcy court would set aside its memorandum of decision, so that it could not be used as precedent against the AG in the future. (*Id.* ¶ 74; RJN Ex. A.) SGM objected to the proposed order submitted by the AG and Plaintiffs. (FAC ¶ 74, RJN Ex. B.)

On November 14, 2019, the bankruptcy court entered an order stating that the assets could be sold without the AG's additional conditions. (FAC ¶¶ 75-76.) The deadline to appeal that Order was November 29, 2019. As of November 20, the Order had not become final and non-appealable, as required by APA Section 8.6. On November 29, 2019, SGM timely appealed that Order. (RJN Ex. C.) On December 10, 2019, Plaintiffs filed an emergency motion seeking to dismiss SGM's appeal contending that SGM did not have standing to appeal the order claiming that SGM had waived its right to appeal. (RJN Ex. D.) On December 20, 2020, this Court denied the motion and specifically found that SGM "did not waive its right to appeal the Bankruptcy Court Order…." (RJN Ex. E.) That order remained subject to appeal until June 10, 2020. On June 10, the Court vacated the bankruptcy's court November 14 order based on its finding that the appeal had become moot. (RJN Ex. F.)

D. Plaintiffs' Alleged Attempt to Satisfy APA Section 8.7

Section 8.7 of the APA obligated Plaintiffs to transfer their Medicare and

Medi-Cal provider agreements to SGM pursuant to "settlement agreements" with CMS (Medicare) and DHCS (Medi-Cal):

> 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.)

As of the commencement of their Chapter 11 cases, Plaintiffs had accumulated substantial liabilities to DHCS, which administers Medi-Cal in California, for unpaid Hospital Quality Assurance Fees ("HQA Fees"), and for Medi-Cal fee-for-service overpayments. On March 22, 2019, DHCS filed an objection to the proposed sale to SGM, arguing that the Medi-Cal provider agreements between it and Plaintiffs 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). (RJN Ex. G.) Thus, according to DHCS, the provider agreements associated with each of the hospitals could not be transferred to SGM unless and until the Plaintiffs cured the unpaid HQAF and fee-for-service overpayments. These claims totaled tens of millions of dollars.

In response to DHCS's objection to the sale, on April 10, 2019, Plaintiffs filed a brief in which they argued they did not need to cure defaults because the Medi-Cal provider agreements were non-executory contracts. (RJN Ex. H.)

On May 2, 2019, the bankruptcy court entered its Sale Order authorizing the sale of the Hospitals to SGM free and clear of claims, liens, and encumbrances. RJN Ex. I. However, the court did not rule on the dispute between the Plaintiffs and DHCS regarding whether the provider agreements had to be treated as executory contracts. Instead, the Sale Order expressly carved out the Medi-Cal Provider Agreements from the released claims, liens, and encumbrances, stating: "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." (*Id.*)

On September 11, 2019, DHCS filed a supplemental brief regarding its unresolved objection to the sale of the hospitals free and clear of claims relating to the Debtors' Medi-Cal Provider Agreements. (RJN Ex. J.) DHCS claimed that it was owed in excess of $70 Million for unpaid HQA Fees and for reimbursement of fee for service overpayments that would have to be "cured" before the Provider Agreements could be transferred to SGM. (*Id*. at 7-11.) Plaintiffs argued that the Provider Agreements could be transferred free and clear of any liens and claims without compliance with Bankruptcy Code § 365. (RJN Ex. K at 15-16.) Plaintiffs conceded they needed to provide SGM with such a transfer to satisfy the APA. (*See id*.)

On September 26, 2019, the bankruptcy court filed its Memorandum of Decision in which it ruled that the Medi-Cal Provider Agreements could be transferred without compliance with Bankruptcy Code § 365(b). (RJN Ex. L.) However, the court did not decide whether DHCS could retain its recoupment rights, which would have allowed DHCS to recover its claims against Plaintiffs from monies otherwise payable to SGM post-closing. (*See id*.) Preservation of such recoupment rights would have prevented Plaintiffs from satisfying the condition in APA § 8.7, namely, that the provider agreements be transferred free and clear and that SGM be fully released of DHCS claims. In its Memorandum of Decision, the

bankruptcy court expressly acknowledged that APA Section 8.7 obligated Plaintiffs to transfer the Provider Agreements free and clear of any DHCS claims of liability. *See id*. at 3 ("Each of the Hospitals has executed a Provider Agreement with DHCS. The Asset Purchase Agreement (the "APA") [Dkt. 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 statement that it was not deciding the recoupment issue, Plaintiffs lodged a proposed order seeking to prevent DHCS from recouping payments from future SGM receivables in connection with the transfer of the Medi-Cal Provider Agreements. (RJN, Ex. M.) On October 9, 2019, DHCS objected to Plaintiffs' proposed order, arguing "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." (RJN, Ex. N.)

On October 11, 2019, the bankruptcy court agreed with DHCS that Plaintiffs' proposed order was overreaching, stating that: "the Memorandum Decision did not determine whether DHCS' recoupment rights against SGM (if any) are extinguished…." (RJN Ex. O at fn. 2.) On October 11, 2019, the court entered an order that 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 against the Debtors and SGM for future adjudication. (*Id*.) The court thus left open the question of whether the Medi-Cal Provider Agreements could be transferred free of recoupment rights and the bankruptcy Court did not make any further rulings on this issue before Plaintiffs demanded that SGM close on November 20, 2019.

E. Plaintiffs' Notice to Close And Termination Of the APA Based on SGM's Failure to Close on December 5.

On November 20, 2019, Plaintiffs sent SGM a letter representing that they had satisfied all conditions to close as of November 19, 2019 and demanding that SGM close the transaction by December 5, 2019. (FAC ¶ 87.) On December 5, 2019, when SGM did not close, Plaintiffs sent SGM a notice of default. (FAC ¶ 100.)

On December 17, 2019, Plaintiffs gave notice to SGM that they were terminating the APA (the "Termination Notice"), stating: "As you are aware, on November 25, 2019, November 27, 2019, and December 5, 2019, [Plaintiffs] sent [SGM] notices of SGM's material breaches under the [APA] . . . ." (RJN Ex. P.) Plaintiffs continued: "As a result of each of the above material breach notices, the APA will terminate effective December 27, 20219." (*Id.*) On January 3, 2020, Plaintiffs filed a Notice of the Termination of the APA with the court based on SGM's alleged failure to close *on December 5, 2019.* (*See* RJN Ex. Q.)

F. Defendants' First Motion to Dismiss and Anti-SLAPP Motion

Plaintiffs filed this Adversary Proceeding on January 3, 2020. In their original complaint, Plaintiffs asserted three causes of action: (1) breach of contract; (2) promissory fraud; and (3) a claim described as "tortious breach of contract (breach of the implied covenant of good faith)." In addition to asserting these claims against the contracting party SGM, they also asserted the same claims against the other Defendants based on an alter-ego theory of liability. Because Plaintiffs' claims arose from protected activity, on February 19, 2020, Defendants filed a special motion to strike in accordance with California's Anti-SLAPP statute. Defendants also moved to dismiss Plaintiffs' claims on the ground, *inter alia*, that Plaintiffs' notice to close was invalid because Plaintiffs had not satisfied Section 8.7 at the time they gave the closing demand.

On March 4, 2020, while this Adversary Proceeding was still proceeding

before the bankruptcy court, Plaintiffs filed oppositions to Defendants' motions. On March 5, 2020, this Court granted Defendants' Motion to Withdraw the Reference. (Dkt. 23.) On March 11, 2020, Defendants filed replies in support of each of their motions. Later that same day, Plaintiffs filed the FAC, which attempted to plead around the problems Defendants had identified in each of their motions.

G. Plaintiffs' New Allegations in the FAC

1. Plaintiffs Concoct New Theory of Breach

In their FAC, Plaintiffs, tacitly acknowledging that their November 20 Notice to Close was invalid, offered a new theory to attempt to salvage their breach of contract claim. Plaintiffs now allege that they satisfied the Section 8.7 condition on *December 9*, *2019*, when the bankruptcy court approved a stipulation Plaintiffs entered into with DHCS providing for the transfer of the Medi-Cal provider agreements. Although Plaintiffs never gave a new notice/demand to close, and although they had already requested in their emergency OSC motion of December 6, 2019 that the bankruptcy court find that Defendants had breached the APA by not closing on December 5 (RJN Ex. R), Plaintiffs now contend in their FAC that *Defendants* "were obligated to propose a new Closing Date for the transaction not more than ten (10) days from the [date the Court approved the stipulation] i.e. 10 days from December 9." (FAC at ¶105.)

That said, on December 17, 2019 – well before 10 business days after December 9 (i.e. December 23, 2019) – Plaintiffs notified SGM that they were terminating the APA based on SGM's alleged pre-December 5, 2019 breaches. (*See* FAC at ¶107; RJN Ex. P.)

2. Plaintiffs Add Claim for Breach of Implied Covenant of Good Faith (But Keep Improper claim for Tortious Breach)

In Defendants' first motion to dismiss, Defendants argued that Plaintiffs' claim for tortious breach of contract did not apply in this case, because it involves

no insurance or fiduciary duties. Defendants explained that Plaintiffs appeared to be conflating the claim for tortious breach of contract with the claim of breach of the implied covenant of fair dealing. Plaintiffs have now added the breach of the implied covenant claim, but retained the improper claim for tortious breach of contract. Plaintiffs have also added a second improper claim for tortious breach of the implied covenant of good faith.

3. Plaintiffs' Attempt to Recast Fraud Allegations

Realizing that their numerous allegations that SGM "never anticipated" that Plaintiffs would satisfy the APA's conditions precluded their fraud theory, Plaintiffs added a new sentence that attempts to downplay those allegations. Plaintiffs now allege, "In all events, at the time the APA was executed and at the time of the Sale Order SGM had no intention of ever paying the Purchase Price Required under the APA, regardless of whether the condition[s] to close were satisfied." (FAC at ¶59-60.)

III. PLAINTIFFS' FAC SHOULD BE DISMISSED WITH PREJUDICE.

A. Plaintiffs' Claims Fail Because Plaintiffs Did Not Satisfy the Conditions Set Forth in APA Sections 8.6 and 8.7.

Each of Plaintiffs' claims depends on Plaintiffs first establishing that they satisfied the conditions to close the sale as of November 19, 2019, when they represented to SGM that they had satisfied all conditions to closing and demanded that SGM close on December 5, 2019. Plaintiffs have the burden to establish that all conditions precedent have been satisfied. *Consolidated World Investments, Inc. v. Lido Preferred Ltd.,* 9 Cal. App. 4th 373, 380 (1992). Because Plaintiffs did not and cannot establish they satisfied the conditions to close by November 19, 2019 as a matter of law, Plaintiffs cannot establish that Defendants were obligated to close the

transaction on that date or that any alleged harm they have suffered was in anyway attributable to Defendants.[2]

Article 8 of the APA contained numerous "conditions precedent to obligations of [SGM]." As demonstrated below, Plaintiffs failed to satisfy at least two express conditions to close the transaction. Because they did not satisfy both conditions, Plaintiffs' claims fail.

1. Plaintiffs Did Not Satisfy Section 8.6 Before They Improperly Demanded SGM to Close.

APA § 8.6 required Plaintiffs to obtain a "final, non-appealable" Supplemental Sale Order finding that Plaintiffs' assets could be transferred free and clear of additional AG conditions. (*See* APA § 8.6.)

As explained in detail in the factual background section above, on November 14, 2019, the bankruptcy court entered an order, over SGM's objection as to its ambiguous and insufficient wording, that the four hospitals could be sold free and clear of the AG's additional conditions. (FAC ¶¶ 75-76.) On November 29, 2019, SGM timely appealed that order. On December 10, 2019, Plaintiffs filed an emergency motion in this Court seeking to dismiss the appeal on the ground that SGM waived its right to challenge the order. (RJN Ex. D.) On December 20, 2020, this Court denied that motion, stating that SGM "did not waive its right to appeal the Bankruptcy Court Order[.]" (RJN Ex. E.) The order remained pending appeal until June 10, 2020, when it was vacated. This now-vacated order (on which Plaintiffs can no longer rely) was thus not final or "non-appealable," as required by section 8.6, when Plaintiffs improperly demanded that SGM close the transaction in their letter of November 20.

In addition, Plaintiffs' November 20, 2019 closing demand disregarded the express provision of Section 8.6 allowing SGM a 21-business day "Evaluation

[2] Resulting damages is an element of breach of contract and fraud claims. *See Richman v. Hartley*, 224 Cal.App.4th 1182, 1186 (breach of contract requires "resulting damages"); *Lazar v. Superior Court*, 12 Cal.4th 631, 638 (1996) (stating same for fraud elements).

Period" following entry of the Supplemental Sale Order to determine if the order was satisfactory in the exercise of its reasonable business judgment and in consultation with its financing sources. As of November 20, 2019, that Evaluation Period had not expired; accordingly, on November 20, Plaintiffs could not have properly claimed that APA § 8.6 had been satisfied or demanded that SGM close the sale.

2. Plaintiffs Also Cannot Show They Satisfied Section 8.7 Because They Did Not Have a Signed Settlement Agreement With DHCS on November 19, 2019.

APA Section 8.7 obligated Plaintiffs to transfer their Medi-Care and Medi-Cal provider agreements to SGM pursuant to settlement agreements with CMS and DHCS. Section 8.7 unambiguously required Plaintiffs to reach "settlement agreements" with CMS and DHCS that provided for a full "satisfaction, discharge and release" of SGM (APA § 8.7).

Plaintiffs do not allege (because they cannot) that, as of November 19, 2019, they had entered into a signed "settlement agreement" with DHCS as expressly required by § 8.7. Because they had not satisfied this condition, Plaintiffs' November 20, 2019 closing demand was false and inoperative. Consequently, SGM was not obligated to close the sale on December 5, 2019 and Plaintiffs' FAC must be dismissed for this reason alone.

In recognition of the undisputed fact that, as of November 19, 2019, no required settlement agreement between Plaintiffs and DHCS had been entered into, the FAC offers a variety of theories (all of which, as shown below, are facially invalid) to fill this fatal factual gap, including:

(1) Bankruptcy court orders entered on May 2, 2019 and October 11, 2019, respectively, had the combined effect of providing SGM with "equal or greater protection" than the settlement agreement required by § 8.7. (FAC ¶ 86);

(2) On November 22, 2019, the Debtors "announced that they had reached a settlement agreement in principle with DHCS" and that the APA did not require a "written agreement." (FAC at ¶ 92);

(3) On December 9, 2019 (twenty days after Plaintiffs represented that all conditions, including § 8.7, had been satisfied, and four days after Plaintiffs' demanded closing date), Plaintiffs entered into stipulation with DHCS, which Plaintiffs now argue required a closing within 10 business days of that date. (FAC at ¶ ¶ 101-102).

As explained in more detail below, not one of the foregoing theories can be reconciled with § 8.7's mandatory requirement that Plaintiffs enter into a settlement agreement with DHCS providing for a full satisfaction, discharge and release of SGM as a condition precedent to demanding that SGM close the sale on December 5, 2019. Nothing in the APA provides for an "oral agreement," an "agreement in principle," or "court orders" as a substitute for a signed settlement agreement with DHCS. Plaintiffs' new theory that SGM breached by not closing the transaction on some unspecified date in late December also does not work because, *inter alia*, Plaintiffs unambiguously terminated the contract on December 17, 2019, based on SGM's failure to close on December 5, 2019.

Accordingly, even accepting as true all of the properly pleaded factual allegations of the FAC, Plaintiffs fail to allege a viable claim.

a. The Bankruptcy Court Orders Did Not Satisfy § 8.7

Plaintiffs argue that they satisfied Section 8.7 even though they did not obtain a settlement agreement with DHCS, because they secured an "Order [Docket No. 3372] from the bankruptcy court authorizing the transfer free and clear of any interests asserted by DHCS, in addition to the Sale Order which they contend terminated any creditor's recoupment rights [Docket No. 2306]." (FAC ¶86.) Plaintiffs contend those "orders afforded equal or greater protection to SGM than

any settlement could have, thereby satisfying Section 8.7." (*Id.*) This argument fails for at least two reasons.

i. Only a Settlement Agreement Satisfies § 8.7

Section 8.7 unambiguously requires Plaintiffs to reach a "Settlement Agreement" with DHCS. There is nothing in § 8.7 that allows Plaintiffs to satisfy this condition through some alternative means. SGM bargained for a Settlement Agreement, signed by DHCS, which would guarantee that it would have no liability or potential fight with DHCS. At best, the alleged orders would have given SGM an *argument* in a future dispute with DHCS. An argument is not an equal trade for a proper Settlement Agreement that would fully mitigate SGM's risk and liability.

ii. The Court Orders Do Not Afford "Equal or Better Protection" than A Settlement Agreement.

As demonstrated above in section II.D, the Order of April 2, 2019 (approving the sale but reserving all issues pertaining to the transfer of the Medi-Cal provider agreements free and clear of claims), and the Order of October 11, 2019, on their face, refute Plaintiffs' claim that these Orders "afforded equal or better protection" than a Settlement Agreement, which would have released and discharged all claims that could be asserted against SGM, including recoupment rights.

On May 2, 2019, the bankruptcy court entered its Sale Order authorizing the sale of Plaintiffs' assets to SGM free and clear of claims, liens, and encumbrances, but declining to resolve the executory contract dispute between the Plaintiffs and DHCS. Instead, the Sale Order expressly carved out Medical Provider Agreements from the released claims, liens, and encumbrances: "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." (RJN Ex. I.) The Court thus unambiguously made no ruling and reserved the issue of whether the Medi-Cal provider agreements could be transferred to SGM free and clear of DHCS claims.

In its order of October 11, the bankruptcy court expressly reiterated that the court was reserving for future adjudication the issue of whether the transfer of the Medi-Cal provider agreements could be transferred free and clear of DHCS's recoupment rights against the Debtor and SGM. (RJN Ex. O.) Accordingly, as of November 19, 2019, when Plaintiffs represented that all conditions to closing had been satisfied, SGM remained subject to the risk of having the DHCS recoup from SGM tens of millions of dollars of claims against Plaintiffs. This risk was to have been obviated by the full release required by § 8.7.

Further diminishing Plaintiffs' contention that the court's order of October 11 satisfied the protection that was to be afforded by a settlement agreement, which released and discharged SGM from any liability for Plaintiff's obligations to DHCS, DHCS appealed from the court's October 11 Order and that appeal was pending as of November 19. Thus, as of November 19: (1) Plaintiffs had no "settlement agreement" with DHCS to satisfy the closing condition of § 8.7; (2) the only court order permitting Plaintiffs to transfer their Medi-Cal Provider Agreements to SGM expressly left open DHCS's right to recoup millions of dollars from SGM receivables; and (3) the order authorizing the transfer was not final.

Even if Plaintiffs could substitute their obligation to obtain a settlement agreement with DHCS with an alleged "better" court order, Plaintiffs cannot meet their burden of establishing that these orders offered equal protection, because the Court expressly reserved the issue regarding DHCS's recoupment rights. In other words, had SGM closed the sale on December 5 as Plaintiffs had demanded, SGM would have been at risk for DHCS's recoupment from SGM's accounts receivables acquired in the sale for what had become $70 million of claims.

b. Plaintiffs' Alleged November 22, 2019 "Settlement" With DHCS Did Not Satisfy § 8.7.

Plaintiffs also allege that they reached a settlement with DHCS on November 22, 2019. (FAC ¶ 86.) As an initial matter, even if Plaintiffs had obtained a

settlement agreement with DHCS on November 22, 2019, this would not justify Plaintiffs' improper notice of closing, sent two days earlier on November 20.

That said, Plaintiffs have admitted they did not have any such agreement with DHCS, nor were the terms of such "settlement" ever disclosed to SGM or the bankruptcy court. Indeed, at a court hearing on November 26, 2019, Plaintiffs counsel stated that they just had a "settlement in principle" and were still "negotiating the terms of a written settlement agreement." RJN Ex. S. Plaintiffs thus acknowledged they did not have a final enforceable settlement agreement with DHCS as of November 26, 2019. DHCS also obviously did not believe it had a binding agreement because it filed its opening brief on appeal from the October 11, 2019 order on December 9, 2019. (RJN Ex. T.) Plaintiffs cannot seriously argue that "a settlement in principle" satisfied § 8.7. At best, this would leave SGM with an argument – and a bad one – that DHCS had released its claims.

c. Plaintiffs' New Breach Theory Does Not Save Their Claims.

Apparently recognizing that their November 20 Notice to Close was improper, Plaintiffs invented an entirely new theory of breach to attempt to resuscitate their case. Plaintiffs now assert that they satisfied § 8.7 on December 9, 2019, when the bankruptcy court approved their stipulation with DHCS. Although Plaintiffs never gave a new notice of closing or represented to SGM that as of December 9 they believed they had satisfied § 8.7, Plaintiffs now argue that Defendants breached by not closing within 10 business days of December 9, 2019.

Setting aside whether this new stipulation between Plaintiffs and DHCS satisfied § 8.7 (it did not, in part because it purported to impose on SGM the obligation to cure millions of dollars of DHCS claims), and gave rise to a new 10-business day closing period, on December 6, 2019, Plaintiffs sought an order from the bankruptcy court that SGM had materially breached by not closing on December 5. (RJN Ex. R.) Plaintiffs then terminated the APA on December 17,

which was well before expiration of this newly alleged 10-day closing period. In the Notice of Termination, Plaintiffs expressly represented that they were terminating based on Defendants' alleged *prior* breaches. (RJN Ex. P.) Plaintiffs stated: "As you are aware, on November 25, 2019, November 27, 2019, and December 5, 2019, [Plaintiffs] sent Strategic Global Management notices of SGM's material breaches under the [APA]. . . . As a result of each of the above material breach notices (none of which mentions the December 9 stipulation or another closing date), the APA will terminate effective December 27, 2019." (*Id.*)

Plaintiffs thus made clear that they were exercising their self-proclaimed right to terminate the APA based on breaches that allegedly occurred on or before December 5, 2019. Plaintiffs cannot now pretend they were expecting Defendants to close on some unspecified future date.

B. Plaintiffs' Promissory Fraud Claim Fails as a Matter of Law.

Plaintiffs' promissory fraud claim fails for two separate and distinct reasons.

1. The Alleged Fraudulent Representation Is Protected by the Litigation Privilege.

One of the many purposes of the litigation privilege codified in § 47(b) of the California Civil Code is to "promote the effectiveness of judicial proceedings by encouraging 'open channels of communication and the presentation of evidence[.]'" *Silberg v. Anderson*, 50 Cal. 3d 205, 213 (1990) (quoting *McClatchy Newspapers, Inc. v. Superior Court*, 189 Cal. App. 3d 961, 970 (1987). Courts have explained that "such open communication is 'a fundamental adjunct to the right of access to judicial and quasi-judicial proceedings.'" *Id.* (quoting *Pettitt v. Levy,* 28 Cal. App. 3d 484, 490-491, 104 (1972)). To be protected, the communications just need to "have some connection or logical relation to the action." *Id.; see also Sacramento Brewing Co. v. Desmond, Miller & Desmond,* 75 Cal. App. 4th 1082, 1089 (1999) ("The privilege should be denied only where it is so palpably irrelevant to the subject matter of the action that no reasonable person can doubt its irrelevancy.").

"To effectuate its vital purposes, the litigation privilege is held to be absolute in nature." *Silberg*, 50 Cal. 3d at 215. The privilege "is broadly applied and doubts are resolved in favor of the privilege." *Ramalingam v. Thompson*, 151 Cal. App. 4th 491, 500 (2007) (citations omitted); *see also Olsen v. Harbison,* 191 Cal. App. 4th 325, 333 (2010) ("The breadth of the litigation privilege cannot be understated.").

It is also well-settled that a "bankruptcy proceeding is a judicial proceeding within the scope of California's litigation privilege." *In re Cedar Funding, Inc.,* 419 B.R. 807, 825 (B.A.P. 9th Cir. 2009); *see also Sacramento Brewing Co.,* 75 Cal. App. 4th at 1086 (holding that privilege applied to a statement made in a motion filed in a bankruptcy proceeding); *Shoemaker v. Siegel*, No. 1:17-BK-015182-GM, 2017 WL 3671154, at *3 (C.D. Cal. Aug. 25, 2017), *aff'd sub nom. In re Shoemaker*, 749 F. App'x 565 (9th Cir. 2019) (finding that litigation privilege applied to claims of fraud and negligent misrepresentation arising from statements made in connection with a bankruptcy proceeding). Given its absolute nature, Section 47(b) provides a complete defense to claims arising from protected speech, including claims of fraud. *E.g., Navarro v. IHOP Properties, Inc.,* 134 Cal. App. 834, 841-42 (2005) (finding claims that IHOP did not intend to comply with release was covered by privilege).

In opposing Defendants' first Motion to Dismiss, Plaintiffs argued that the litigation privilege did not cover Defendants because they were not parties to the bankruptcy when SGM entered into the APA. But the litigation privilege does not apply only to parties; it applies broadly to anyone connected with the proceedings. *See Kolar v. Donahue, McIntosh & Hammerton,* 145 Cal. App. 4th 1532, 1540 (2006); *see also Olsen*, 191 Cal. App. 4th at 334.

In *Olsen*, the California court of appeal expressly rejected Plaintiffs' argument. In that case, a plaintiff alleged that an attorney made various fraudulent representations to induce the plaintiff to associate the attorney in as counsel in ongoing litigation. Just as Plaintiffs did here, the *Olsen* plaintiff argued that that the

defendant attorney's representations were not privileged because the attorney was "was not a participant in the Klawitter litigation when he made the alleged representations." *Id.* at 334. The court of appeal rejected this argument, explaining: "Although defendant was not actually involved in the Klawitter litigation when his alleged statements were made, these communications were linked to ongoing litigation and his participation was imminent. They therefore fell within the ambit of the litigation privilege." *Id.* at 335 (emphasis added). Accordingly, SGM's alleged fraudulent representation is privileged because it was made in relation to an ongoing bankruptcy in which it was a participant.

Because Plaintiffs' claims for fraud arise from privileged representations made in connection with a judicial proceeding, their claims fail.

2. Plaintiffs' Allegations Do Not Support Fraud.

The elements of fraud are: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court*, 12 Cal. 4th 631, 638 (1996) (quoting Witkin, Summary of Cal. Law (9th ed. 1988) Torts § 676)). "An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." *Lazar v. Superior Court,* 12 Cal. 4th 631, 638 (1996). However, to be actionable fraud, the plaintiff must establish that the defendant did not intend to comply with the contract at the time the defendant entered the contract. *Magpali v. Farmers Group, Inc.,* 48 Cal. App. 4th 471, 481 (1996) ("A promise of future conduct is actionable as fraud only if made without a present intent to perform.").

Here, Plaintiffs' own factual allegations contradict their claim that Defendants intended to breach the APA when SGM agreed to it. In at least six different places in their FAC, Plaintiffs allege that Defendants did not have fraudulent intent. Instead, Defendants allegedly made a mistake in judgment because they erroneously believed Plaintiffs would not satisfy the conditions to

SGM's obligation. *See* FAC at Preliminary Statement ("Defendants **never** anticipated that Plaintiffs would obtain agreement from Attorney General…'"); *id.* ("Defendants believed they would **never** be obligated to pay full purchase price…"); FAC at ¶59 ("SGM had concluded that the APA imposed conditions that Plaintiffs could **never** satisfy...."); *id.* ("SGM **never** anticipated that Debtors would obtain agreement from the Attorney General…"); *id.* (SGM assumed "that it would **never** be obligated to pay full Purchase Price); FAC at ¶78 ("SGM **did not** anticipate such a favorable order would be entered, but instead anticipated that supplemental sale order would … give SGM the option to withdraw…."). An alleged mistake in judgment does not support a fraud claim.

Plaintiffs tacitly concede Defendants' point in the FAC by attempting to downplay the foregoing allegations. Plaintiffs have now added the allegation that: "In all events, at the time the APA was executed and at the time of the Sale Order SGM had no intention of ever paying the Purchase Price Required under the APA, regardless of whether the condition to close were satisfied." FAC at ¶60. This new allegation is of no moment. Plaintiffs' specific allegations establish that Defendants did not have an intent to breach the contract; rather, according to Plaintiffs, they were of the mistaken opinion that Plaintiffs would not satisfy the APA's conditions.

Plaintiffs' fraud theory also fails as a practical matter. SGM made a good faith deposit of $30 million when it entered into the APA. If SGM did not comply with its contractual obligation to close the sale, that $30 million deposit could be lost. It defies credulity to believe that any party would deposit $30 million if it did not intend to comply with the contract.

Because Plaintiffs' allegations conclusively establish that Defendants did not have the required intent to breach the contract when they entered it, Plaintiffs' claim for promissory fraud fails as a matter of law and should be dismissed for this additional reason.

C. Plaintiffs' Claims for "Tortious Breach of Contract" Fail as a Matter of Law.

Plaintiffs' claims for "Tortious Breach of Contract" and "Tortious Breach of Implied Covenant of Good Faith and Fair Dealing" are not a cognizable in this context and must therefore be dismissed.

It is well-established in California that a "person may not ordinarily recover in tort for the breach of duties that merely restate contractual obligations." *Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Group*, 143 Cal. App. 4th 1036, 1041 (2006); *Aas v. Superior Court*, 24 Cal.4th 627, 643 (2000) (same). For that reason, both the California Supreme Court and the Ninth Circuit have held for decades that there are no such claims as "tortious breach of contract" or "tortious breach of the implied covenant of good faith and fair dealing" in arms-length transactions such as this one. *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 514 (1994) ("One contracting party owes no general tort duty to another not to interfere with performance of the contract; its duty is simply to perform the contract according to its terms."); *Fund for Operating Eng'rs v. Fed. Ins. Co.*, 307 F.3d 944, 955 (9th Cir. 2002) ("Generally, no cause of action for the tortious breach of the implied covenant of good faith and fair dealing can arise unless the parties are in a special relationship with fiduciary characteristics. Thus, *the implied covenant tort is not available to parties of an ordinary commercial transaction where the parties deal at arms' length."*) (emphasis added); *see also California Joint Powers Ins. Auth. v. Munich Reinsurance Am., Inc.*, 2008 WL 1885754, at *2 (C.D. Cal. Apr. 21, 2008) ("Because the covenant of good faith and fair dealing essentially is a contract term that aims to effectuate the contractual intentions of the parties, compensation for its breach has almost always been limited to contract rather than tort remedies.").[3]

[3] While there are exceptions to this rule in insurance cases and where the parties are in a special relationship, these exceptions do not apply here.

Confronting this black-letter law set forth in SGM's first motion to dismiss, Plaintiffs attempted to distract the Court by wrongly claiming that the California Supreme Court recognized a claim for tortious breach of contract decision in *Robinson Helicopter v. Dana Corp*., 34 Cal.4th 979, 991 (2004). *See* Plaintiffs' Opp. to Defendants Motion at 26:3-27:10. Not so. *Robinson Helicopter* involved the *economic loss rule*– it stands for the unremarkable position that if the defendant's conduct constitutes both a breach of the parties' contract *and* violates an *independent* tort duty, than the plaintiff's *tort* claims are not barred by the economic loss rule. *See Robinson Helicopter*, 34 Cal.4th at 991("We hold the economic loss rule does not bar Robinson's *fraud and intentional misrepresentation claims* because they were *independent* of Dana's breach of contract.") (emphasis added). This has been the rule for years. *E.g., Erlich v. Menezes*, 21 Cal.4th 543, 551 (1999) ("conduct amounting to a breach of contract becomes tortious only when it also violates a duty independent of the contract arising from principles of tort law. . . . An omission to perform a contract obligation is never a tort, unless that omission is also an omission of a legal duty."); *Applied Equip. Corp*., 7 Cal. 4th at 516 (In the absence of an independent tort, punitive damages may not be awarded for breach of contract "even where the defendant's conduct in breaching the contract was willful, fraudulent, or malicious."). In other words, if the defendant commits a tort, the plaintiff can sue for that tort. *Robinson Helicopter* did not establish a new cause of action for "tortious breach of contract" or "tortious breach of the implied covenant of good faith and fair dealing."[4]

[4] Plaintiffs' own citation to *Robinson Helicopter* makes this clear. *Robinson Helicopter* cites *Erlich v. Menezes*, which in turn cites the concurring and dissenting opinion in *Freeman & Mills, Inc. v. Belcher Oil Co.*, 11 Cal. 4th 85, 105 (1995). The majority in *Freeman* confirmed the "general rule precluding tort recovery for noninsurance contract breach, at least in the absence of violation of 'an independent duty arising from principles of tort law.'" *Freeman & Mills, Inc.*, 11 Cal.4th at 102. As set forth above, that is still the law today. Numerous federal district courts have recognized as much. *Alexsam Inc. v. Green Dot Corp*., 2017 WL 2468769, at *4 (C.D. Cal. 2017) ("A breach of contract is tortious only when some independent duty arising from tort law is violated."); *United Guar. Mortg. Indem. Co. v. Countrywide Fin. Corp.*, 660 F. Supp. 2d 1163,

In sum, Plaintiffs' "tortious breach" claims must be dismissed because they once again fail to state a claim as a matter of law.

IV. CONCLUSION

Because Plaintiffs have not been able to allege a viable claim against Defendants after two attempts, Defendants request that the Court grant with prejudice their Motion to Dismiss.

Dated: July 10, 2020

LEVENE, NEALE, BENDER, YOO & BRILL L.L.P.

By: /s/Gary E. Klausner
Gary E. Klausner

Dated: July 10, 2020

BARNES & THORNBURG LLP

By: /s/ Joel R. Meyer
Joel R. Meyer

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

1183 (C.D. Cal. 2009) (recognizing that *Robinson Helicopter* is an economic loss rule case and is "narrow in scope and limited to a defendant's affirmative misrepresentations on which a plaintiff relies and which expose a plaintiff to liability for personal damages independent of the plaintiff's economic loss."); *Grand Fabrics Int'l Ltd. v. Melrose Textile, Inc.*, 2018 WL 5880175, at *3 (C.D. Cal. 2018) (same); *Thompson v. BMW of N. Am.*, LLC, 2019 WL 988694, at *5 (C.D. Cal. 2019) (same).

SIGNATURE ATTESTATION

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, Joel R. Meyer, attest that all other signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Dated: July 10, 2020

/s/ Joel R. Meyer
Joel R. Meyer

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
☐ 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,

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
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

Debtors and Debtors-in-Possession.

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

Plaintiffs,

v.

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

Defendants.

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

[PROPOSED] ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT [Fed. R. Civ. Proc. 12(b)(6)]

Judge: Hon. Dale S. Fischer

Date: August 10, 2020
Time: 1:30 p.m.
Judge: Dale S. Fischer
Place: Courtroom 7D
350 West 1st Street
Los Angeles, CA 90012

The Court, having considered 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's ("Defendants") Motion to Dismiss Plaintiffs Verity Health System Of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center, and Verity Holdings, LLC's ("Plaintiffs") First Amended Complaint Pursuant to Fed. R. Civ. P. 12(b)(6) ("Motion"), and finding good cause therefore, hereby, **GRANTS** the Motion and

HEREBY ORDERS AS FOLLOWS:

Plaintiffs' First Amended Complaint is dismissed for failure to state a claim.

IT IS SO ORDERED.

Dated: _____

_____
Hon. Dale S. Fischer
UNITED STATES DISTRICT JUDGE