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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
☐ 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

☐ Affects St. Francis Medical Center of Lynwood Foundation ☐ Affects St. Vincent Foundation ☐ Affects St. Vincent Dialysis Center, Inc. ☐ Affects Seton Medical Center Foundation ☐ Affects Verity Business Services ☐ Affects Verity Medical Foundation ☐ Affects Verity Holdings, LLC ☐ Affects De Paul Ventures, LLC ☐ Affects De Paul Ventures – San Jose ASC, LLC Debtors and Debtors in Possession.	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 Adv. Case No. 2:20-ap-01001-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, 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._	**DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND STRATEGIC GLOBAL MANAGEMENT, INC.'S COUNTERCLAIMS** **[JURY TRIAL DEMANDED]**
STRATEGIC GLOBAL MANAGEMENT, INC., a California corporation,	

Counter-Plaintiff,

v.

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,

Counter-Defendants.

ANSWER

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 ("Defendants") hereby answer[1] the First Amended Complaint ("FAC") 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 ("Plaintiffs" or "VHS") and state as follows:

1. Defendants assert that the allegations in Paragraph 1 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants admit that the District Court has jurisdiction over this proceeding.

2. Defendants assert that the allegations in Paragraph 2 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 2.

3. Admitted that Plaintiffs' FAC concerns the Asset Purchase Agreement ("APA") dated January 9, 2019. The APA speaks for itself. Defendants assert that the remaining allegations in Paragraph 3 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the remaining allegations in Paragraph 3.

4. SGM asserts that the allegations in Paragraph 4 state legal conclusions and therefore do not require a response. To the extent that a response is required,

[1] Prior to filing this Answer, Defendants filed a Rule 12(b)(6) motion to dismiss Plaintiffs' FAC. Docket # 39. Defendants have filed this Answer for reasons including because there is an ambiguity concerning whether a party filing a motion to dismiss an *amended* complaint must also answer. *See General Mills, Inc. v. Kraft Foods Global, Inc.* 495 F.3d 1378, 1380-1381 (Fed. Cir. 2007). Defendants' answer is not intended to and does not moot any argument set forth in their previously filed motion to dismiss. *Brunig v. Clark*, 560 F.3d 292, 294 (5th Cir. 2009) (filing an answer before the court rules on a motion to dismiss does not moot the Rule 12(b) motion). As stated in the motion to dismiss, Plaintiffs' First Amended Complaint should be dismissed.

Defendants admit that venue is proper in the United States District Court for the Central District of California.

5. Defendants assert that the allegations in Paragraph 5 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 5. However, Defendants do not consent to the entry of final orders or judgments by the bankruptcy court.

6. Defendants admit that Plaintiff VHS holds itself out as a nonprofit public benefit corporation located at 601 South Figueroa Street, Suite 4050, Los Angeles, California. Defendants lack sufficient information to admit or deny the truth or falsity of the remaining allegations of Paragraph 6, and therefore deny the same.

7. Defendants admit that Plaintiff St. Vincent held itself out as a California nonprofit corporation located at 601 South Figueroa Street, Suite 4050, Los Angeles, California. Defendants lack sufficient information to admit or deny the truth or falsity of the remaining allegations of Paragraph 7, and therefore deny the same.

8. Defendants admit that Plaintiff St. Francis holds itself out as a California nonprofit public benefit corporation located at 3630 East Imperial Highway in Lynwood, California. Defendants lack sufficient information to admit or deny the truth or falsity of the remaining allegations of Paragraph 8, and therefore deny the same.

9. Defendants admit that Plaintiff Seton holds itself out as a nonprofit public benefit corporation with two hospitals located at 1900 Sullivan Avenue in Daly City, California and at 600 Marine Boulevard, Moss Beach, California. Defendants lack sufficient information to admit or deny the truth or falsity of the remaining allegations of Paragraph 9, and therefore deny the same.

10. Defendants admit that Plaintiff Verity Holding holds itself out as a California limited liability company, located at 1850 Sullivan Avenue in Daly City, California. Defendants lack sufficient information to admit or deny the truth or falsity of the remaining allegations of Paragraph 10, and therefore deny the same.

11. Defendants deny any suggestion that the defendants named in the FAC are alter egos of one another. Defendants admit that KPC Global Management, LLC provides management services to the hospitals. Defendants also admit that a defendant owns Victor Valley Global Medical Center, Hemet Community Medical Center, and Menifee Valley Medical Center. Except as stated herein, the allegations in Paragraph 11 are denied.

12. Admitted that SGM is a California corporation and that Dr. Kali P. Chaudhuri is the majority (or sole) shareholder of SGM. Dr. Kali P. Chaudhuri is SGM's Chief Executive Officer and William Thomas is its Secretary. Defendants also admit that SGM is the contracting party in the Asset Purchase Agreement. The address alleged for SGM is correct. The legal filings described in the paragraph speak for themselves. Except as stated herein, Defendants deny the allegations in Paragraph 12.

13. Admitted that Kali P. Chaudhuri, M.D. is a resident of Hemet, California and that Dr. Chaudhuri has had many successes in his professional endeavors. Defendants deny that the remaining allegations of Paragraph 13 relating to the contents of the website are relevant to this matter or of legal significance. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 13.

14. Defendants admit that KPC Healthcare Holdings, Inc. is a California Corporation. Dr. Kali P. Chaudhuri is its Chief Executive Officer, Kali Priyo Chaudhuri is its Chief Financial Officer, and William Thomas is its secretary. KPC Healthcare Holdings is located at 9 KPC Parkway, Suite 301, in Corona, CA, but that is not the same campus as the hospital Orange County Global Medical Center. Except as stated herein, Defendants deny the allegations in Paragraph 14.

15. KPC Healthcare, Inc. is a Nevada Corporation. KPC Healthcare, Inc. is owned by KPC Healthcare Holdings, Inc., which is owned by an Employee Stock Ownership Plan ("ESOP"). Neither Dr. Chaudhuri nor SGM hold any ownership interest in the ESOP. KPC Healthcare, Inc.'s CEO is Mr. Baronoff and Mr. Thomas is

its secretary. The address alleged is correct. The allegations in Paragraph 15 are denied except as stated herein.

16. KPC Health Plan Holdings, Inc. is a California corporation in which Dr. Chaudhuri is a majority or sole shareholder. Dr. Chaudhuri is also its CEO, Mr. Thomas is its secretary, and Kali Priyo Chaudhuri is its CFO. The address alleged is correct.

17. Admitted that KPC Global Management, LLC is a California limited liability company and that Dr. Kali P. Chaudhuri is a member of KPC Global Management, LLC. The address alleged is correct.

18. Defendants assert that the allegations in Paragraph 18 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 18.

19. Defendants assert that the allegations in Paragraph 19 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 19.

20. Denied.

21. Defendants assert that the allegations in Paragraph 21 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 21.

22. Defendants assert that the allegations in Paragraph 22 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 22.

23. Defendants assert that the allegations in Paragraph 23 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 23.

24. Defendants assert that the allegations in Paragraph 24 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 24.

25. Denied.

26. Defendants assert that the allegations in Paragraph 26 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 26.

27. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 27, and therefore deny the same.

28. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 28, and therefore deny the same.

29. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 29, and therefore deny the same.

30. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 30, and therefore deny the same.

31. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 31, and therefore deny the same.

32. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 32, and therefore deny the same.

33. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 33, and therefore deny the same.

34. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 34, and therefore deny the same.

35. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 35, and therefore deny the same.

36. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 36, and therefore deny the same.

37. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 37, and therefore deny the same.

38. Admitted.

39. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 39, and therefore deny the same.

40. Admitted that Plaintiffs agreed to the APA. The APA speaks for itself. Defendants lack sufficient information to admit or deny the truth or falsity of the remaining allegations of Paragraph 40, and therefore deny the same.

41. Admitted that SGM made an offer, dated August 13, 2018, to purchase certain of Plaintiffs' assets in the bankruptcy proceedings. The content of the offer speaks for itself. Except as stated herein, Defendants deny the allegations in Paragraph 41.

42. Defendants admit that SGM's offer was made in good faith. To the extent that a further response is required, Defendants deny the allegations in Paragraph 42.

43. Admitted that on December 3, 2018, Mr. Thomas provided to James Moloney a letter regarding Dr. Kali P. Chaudhuri's relationship with his personal financial institution and certain available liquidity. Defendants assert that the remaining allegations in Paragraph 43 state legal conclusions and therefore do not require a response. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 43.

44. Admitted that SGM's representatives met with Plaintiffs' representatives at various points to discuss the transaction described in the parties' Asset Purchase Agreement. Except as stated herein, Defendants deny the allegations in Paragraph 44.

45. Admitted that SGM executed the Asset Purchase Agreement on or about January 8, 2019. Defendants lack sufficient information to admit or deny the truth or falsity of the remaining allegations of Paragraph 45, and therefore deny the same.

46. Denied that SGM "was not serious about closing" or that it was "not able to close the Sale transaction in accordance with the APA at the purchase price" at the time it entered into the APA. Defendants lack sufficient information to admit or deny the truth or falsity of the remaining hypothetical allegations of Paragraph 46, and therefore deny the same.

47. Defendants assert that the Asset Purchase Agreement speaks for itself and that the remaining allegations in Paragraph 47 state legal conclusions and therefore do not require a response. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 47.

48. Admitted that Plaintiffs filed a motion with that title on January 17, 2019.

49. Admitted that the bankruptcy court held a hearing on February 6, 2019. The remaining allegations in Paragraph 49 state legal conclusions and therefore do not require a response. The record from that hearing speaks for itself.

50. The record from the February 6, 2019 hearing speaks for itself. Admitted that APA Section 8.6 was intended to benefit SGM. Defendants assert that the Asset Purchase Agreement speaks for itself and that the remaining allegations in Paragraph 50 state legal conclusions and therefore do not require a response. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 50.

51. Admitted that the bankruptcy court held a hearing on February 19, 2019 on the Sale and Bidding Procedures Motion referenced in Paragraph 51. Defendants assert that the remaining allegations in Paragraph 51 state legal conclusions and therefore do not require a response. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 51.

52. Defendants admit that Mr. Thomas sent emails to Mr. Moloney. The content of those communications speak for themselves.

53. Admitted that Plaintiffs declared SGM the "winning bidder" under the APA. Defendants lack sufficient information to admit or deny the truth or falsity of the remaining allegations of Paragraph 53, and therefore deny the same.

54. Admitted that the bankruptcy court entered the Sale Order on or about May 2, 2019.

55. Defendants assert that the Sale Order and the Asset Purchase Agreement speak for themselves and that the remaining allegations in Paragraph 55 state legal

conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the remaining allegations in Paragraph 55.

56. Defendants assert that the allegations in Paragraph 56 state legal conclusions and therefore do not require a response. Any such filings speak for themselves. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 56.

57. The content of the website speaks for itself. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 57.

58. The content of the website speaks for itself. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 58.

59. Denied.

60. Denied.

61. Defendants lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 61, and therefore deny the same.

62. Defendants assert that the allegations in Paragraph 62 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants state that they lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 62, and therefore deny the same.

63. Defendants assert that the allegations in Paragraph 63 state legal conclusions and therefore do not require a response. Plaintiffs' filings speak for themselves. To the extent that a response is required, Defendants state that they lack sufficient information to admit or deny the truth or falsity of the allegations of Paragraph 63, and therefore deny the same.

64. Defendants assert that the allegations in Paragraph 64 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the remaining allegations in Paragraph 64.

65. Admitted that APA Section 8.6 was a condition on SGM's obligation to close in the APA and was for SGM's benefit. Defendants assert that the Asset

Purchase Agreement speaks for itself and that the remaining allegations in Paragraph 65 state legal conclusions and therefore do not require a response.

66. Denied that Plaintiffs satisfied APA Section 8.6. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 66.

67. Defendants admit that Plaintiffs requested the Attorney General's consent to the sale. The content of their filings speak for themselves. Defendants assert that the remaining allegations in Paragraph 67 state legal conclusions and therefore do not require a response.

68. Admitted that Deputy Attorney General Scott Chan held public hearings at the hospitals during the week of August 26, 2019. Defendants deny the remaining allegations of Paragraph 68.

69. Admitted that Mr. Baronoff spoke at the August 26, 2019 Attorney General Public Meeting. The record from the hearing speaks for itself. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 69.

70. Admitted that Mr. Baronoff spoke at the August 27, 2019 Attorney General Public Meeting. The record from the hearing speaks for itself. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 70.

71. Admitted that Mr. Baronoff spoke at the August 29, 2019 Attorney General Public Meeting. The record from the hearing speaks for itself. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 71.

72. Admitted that the "Additional Conditions" sought by the Attorney General were materially different than those SGM contractually agreed to in the APA. The content of Plaintiffs' court filings speak for themselves.

73. Defendants assert that the allegations in Paragraph 73 state legal conclusions and therefore do not require a response.

74. Defendants assert that the allegations in Paragraph 74 state legal conclusions and therefore do not require a response.

75. Defendants admit that SGM objected to the proposed order. Defendants assert that the remaining allegations in Paragraph 75 state legal conclusions and therefore do not require a response.

76. Defendants assert that the allegations in Paragraph 76 state legal conclusions and therefore do not require a response. However, admitted that the bankruptcy court issued an order on November 14, 2019. Denied that the order has any force and effect because it was vacated by the United States District Court for the Central District of California.

77. Admitted that the bankruptcy court issued an order on November 14, 2019. Denied that the order has any force and effect because it was vacated by the United States District Court for the Central District of California. Defendants also deny any suggestion that Plaintiffs satisfied the condition stated in section 8.6 of the APA. The contents of the APA speaks for itself.

78. Denied.

79. Admitted that APA Section 8.7 was intended to benefit SGM. Denied that Section 8.7 merely required that Plaintiffs "secure transfer of Medicare and Medi-Cal Provider Agreements to SGM." Section 8.7 required Plaintiffs to enter into *settlement agreements* with the Centers for Medicare and Medicaid Services and California Department of Health Care Services that obtained the full satisfaction, discharge, and release of *any claims* under the Medicare or Medi-Cal provider agreements, *whether known or unknown*, that CMS or DHCS, as applicable, has against the Plaintiffs or SGM. Defendants assert that the remaining allegations in Paragraph 79 state legal conclusions and therefore do not require a response. The exact contents of the APA also speaks for itself. Defendants deny that Plaintiffs satisfied the condition stated in

section 8.7 of the APA. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 79.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Defendants admit that, despite Plaintiffs' breaches and failures to satisfy the conditions discussed herein, Defendants attempted to resolve the disputes so a sale could proceed. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 84.

85. Defendants assert that the allegations in Paragraph 85 state legal conclusions and therefore do not require a response. The APA speaks for itself. Further denied that Plaintiffs satisfied all conditions precedent to closing by November 18, 2019 or at any time thereafter. Defendants also deny that the order entered by the bankruptcy court, which has been vacated, has any significance. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 85.

86. Denied.

87. Admitted that Plaintiffs' counsel sent a letter to SGM on November 20, 2019 falsely alleging that the conditions to close under the APA had been satisfied. Defendants deny that Plaintiffs had satisfied their contractual obligations under the APA or conditions to closing at this, or any other, time. Except as stated herein, Defendants deny the allegations in Paragraph 87.

88. Denied.

89. Denied.

90. Admitted that SGM sent Plaintiffs letters from Gary Klausner, Esq. of Levene, Neale, Bender, Yoo & Brill L.L.P. and Robert W. Lundy, Jr. of Hooper, Lundy & Bookman, P.C. (with enclosures), setting forth Plaintiffs' failure to satisfy

their obligations and the conditions precedent under the APA required to close the sale. Defendants deny the remaining allegations in Paragraph 90.

91. Admitted that SGM filed a Reservation of Rights in advance of the November 26, 2019 status conference. Defendants further deny that the bankruptcy court's statements made during the November 26, 2019 hearing have any force and effect because the bankruptcy court's order after that hearing was vacated by the United States District Court for the Central District of California. Defendants assert that the remaining allegations in Paragraph 91 state legal conclusions and therefore do not require a response. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 91.

92. Defendants assert that the allegations in Paragraph 92 state legal conclusions and therefore do not require a response. The record of the November 26, 2019 Status Conference and the contents of the APA speak for themselves. Defendants deny that Plaintiffs satisfied the conditions in section 8.7 of the APA. To the extent that a further response is required, Defendants deny the remaining allegations in Paragraph 92.

93. Admitted that the bankruptcy court issued an order on November 27, 2019 [Docket No. 3724]. Defendants assert that the allegations in Paragraph 93 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the remaining allegations in Paragraph 93. Defendants further deny that the bankruptcy court's Memorandum of Decision and Order have any force and effect because the bankruptcy court's November 27, 2019 Order was vacated by the United States District Court for the Central District of California.

94. Admitted that the parties exchanged subsequent communications concerning Plaintiffs' failure to satisfy their obligations and conditions precedent under the APA. The content of any written communications speak for themselves. Defendants deny the remaining allegations in Paragraph 94.

95. Admitted that the parties exchanged subsequent communications concerning Plaintiffs' failure to satisfy their obligations and conditions precedent under the APA. The content of any written communications speak for themselves. Defendants deny the remaining allegations in Paragraph 95.

96. Admitted that SGM filed notices of appeal [Docket Nos. 3726 & 3727] on November 29, 2019. SGM's appeals resulted in the vacatur of the bankruptcy court's orders from which SGM appealed. Defendants deny the remaining allegations in Paragraph 96.

97. Defendants deny that they failed to participate in any required meetings. Indeed, Plaintiffs had not satisfied their obligations and conditions to SGM's performance. To the extent a further response is required, Defendants deny the remaining allegations in Paragraph 97.

98. Admitted that the parties exchanged subsequent communications concerning Plaintiffs' failure to satisfy their obligations and conditions precedent under the APA. The content of any written communications speak for themselves. Defendants deny the remaining allegations in Paragraph 98.

99. Admitted that the parties had subsequent discussions concerning Plaintiffs' failure to satisfy their obligations and conditions precedent under the APA. The content of any written communications speak for themselves. Defendants deny the remaining allegations in Paragraph 99.

100. Admitted that the parties had subsequent discussions concerning Plaintiffs' failure to satisfy their obligations and conditions precedent under the APA (the contents of which speak for themselves) and that the Plaintiffs wrongfully sent a notice of default to SGM dated December 5, 2019. Defendants deny the remaining allegations in Paragraph 100.

101. Defendants assert that the allegations in Paragraph 101 state legal conclusions and therefore do not require a response. The stipulations and order speak

for themselves. To the extent that a response is required, Defendants deny the remaining allegations in Paragraph 101.

102. Defendants assert that the allegations in Paragraph 102 state legal conclusions and therefore do not require a response. The stipulations and order speak for themselves. To the extent that a response is required, Defendants deny the remaining allegations in Paragraph 102.

103. Defendants admit that Plaintiffs' counsel sent a letter to SGM's counsel, Gary Klausner, on December 10, 2019. Defendants deny that the contents of that letter are true and correct.

104. Defendants admit that Plaintiffs' counsel sent a letter to SGM's counsel, Gary Klausner, on December 10, 2019. Defendants deny that the contents of that letter are true and correct.

105. Defendants admit that no party noticed or demanded a closing besides Plaintiffs' improper notice on November 20, 2019. The APA speaks for itself. Defendants assert that the remaining allegations in Paragraph 105 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 105.

106. Defendants deny that Plaintiffs remained prepared to close until December 27, 2019. Rather, Plaintiffs gave notice on December 17, 2019 that they were terminating the APA based on their false contention that SGM had breached by not closing by December 5, 2019. The APA speaks for itself. Defendants assert that the remaining allegations in Paragraph 106 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the remaining allegations in Paragraph 106.

107. Admitted that Plaintiffs' counsel sent a notice to SGM on December 17, 2019 stating that Plaintiffs were terminating the APA based on their contention that Defendants had breached by not closing on December 5, 2019. Of course, this termination was improper because SGM had not breached the APA.

108. Defendants admit that no party noticed or demanded a closing besides Plaintiffs' improper notice on November 20, 2019. Defendants also admit that the sale never closed and Plaintiffs wrongfully terminated the agreement. Defendants deny the remaining allegations in Paragraph 108.

109. Admitted that SGM's representatives communicated with Plaintiffs' representatives after Plaintiffs' wrongful termination of the APA. SGM admits that it made offers to purchase Seton in February 2020.

110. Admitted that SGM's representatives communicated with Plaintiffs' representatives after Plaintiffs' wrongful termination of the APA. SGM states that the content of these communications is protected under Federal Rule of Evidence 408.

111. Admitted that SGM's representatives communicated with Plaintiffs' representatives after Plaintiffs' wrongful termination of the APA. SGM admits that it made offers to purchase Seton in February 2020. To the extent a further response is required, Defendants deny the remaining allegations in Paragraph 111.

112. Admitted that Mr. Baronoff attended the March 6, 2020 meeting of the San Mateo County Board of Supervisors. The hearing record speaks for itself.

113. In response to the first sentence of paragraph 113, Defendants restate and reallege their responses to all paragraphs above as if set forth fully herein. In response to the remaining allegations, denied.

114. Denied.

Defendants restate and reallege their responses to all paragraphs above as if set forth fully herein.

115. Denied.

116. Denied.

117. Denied.

118. Denied.

Defendants restate and reallege their responses to all paragraphs above as if set forth fully herein.

119. Denied.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

Defendants restate and reallege their responses to all paragraphs above as if set forth fully herein.

124. Denied.

125. Denied.

126. Denied.

127. Denied.

Defendants restate and reallege their responses to all paragraphs above as if set forth fully herein.

128. Defendants assert that the allegations in Paragraph 128 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 128.

129. Denied.

130. Denied.

131. Denied.

132. Denied.

AFFIRMATIVE DEFENSES

Without waiving or excusing the burden of proof of Plaintiffs, or admitting that Defendants have any burden of proof, Defendants hereby assert the following separate, additional, and alternative affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

Defendants allege that the FAC, and each and every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action upon which relief

can be granted. Indeed, Defendants have filed a motion to dismiss seeking a dismissal of this action with prejudice, which is currently pending.

SECOND AFFIRMATIVE DEFENSE

(Litigation Privilege)

Defendants Plaintiffs' FAC is barred in whole or in part by California's Litigation Privilege codified in California Civil Code section 47(b) and are precluded by California's Constitution.

THIRD AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Defendants allege that Plaintiffs have failed, refused and/or neglected to mitigate or avoid the damages complained of in the FAC, if any.

FOURTH AFFIRMATIVE DEFENSE

(Laches)

Defendants allege that the FAC, and each and every alleged cause of action therein, are barred, in whole or in part, by the equitable doctrine of laches.

FIFTH AFFIRMATIVE DEFENSE

(Estoppel)

Defendants allege that Plaintiffs are estopped by their conduct from asserting each of the causes of action upon which they seek relief.

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

Defendants allege that the FAC, and each and every alleged cause of action therein, are barred by the doctrine of waiver.

SEVENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Defendants allege that the FAC, and each and every alleged cause of action therein, are barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

(Consent)

Defendants allege that the FAC, and each and every alleged cause of action therein, are barred, in whole or in part, because Plaintiffs consented to the conduct about which they now complain.

NINTH AFFIRMATIVE DEFENSE

(No Damage / Unjust Enrichment)

Defendants allege that Plaintiffs have not suffered any losses and Defendants have not been unjustly enriched as a result of any action or inaction by Defendants or their agents. Plaintiffs are therefore not entitled to any disgorgement or restitution.

TENTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

Defendants allege that each purported cause of action in the FAC, or some of the causes of action, are barred, or recovery should be reduced, pursuant to the doctrine of avoidable consequences.

ELEVENTH AFFIRMATIVE DEFENSE

(No Punitive Damages)

Defendants allege that to the extent that Plaintiffs recover damages in this action, they cannot recover punitive damages.

TWELFTH AFFIRMATIVE DEFENSE

(Offset)

Without conceding that any act of Defendants caused damage to Plaintiffs in any respect, Defendants are entitled to offset against any judgment that may be entered for Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

(Prior Breach by Plaintiffs)

Defendants' obligations, if any, were relieved by Plaintiffs' prior breach of the APA.

FOURTEENTH AFFIRMATIVE DEFENSE

(Mistake)

Plaintiffs' claims are barred in whole or in part by the doctrine of mistake.

RESERVATION OF RIGHTS

Defendants hereby give notice that they intend to rely upon such other and further affirmative defenses as may become available during discovery in this action and reserve the right to amend their Answer to assert any such defenses. Discovery in this matter has not yet commenced and Defendants may uncover additional facts and/or evidence in support of these or other affirmative defenses.

PRAYER

Defendants pray for judgement against Plaintiffs, and each of them, on their Complaint as follows:

1. That Plaintiffs, and each of them, take nothing from their Complaint;
2. That the Court order Plaintiffs to return SGM's $30 million deposit with interest thereon;
3. For attorneys' fees and costs of defense;
4. For such other and further relief as the Court deems is just and proper.

SGM'S COUNTERCLAIMS

Defendant and Counter-Plaintiff Strategic Global Management, Inc. ("SGM") hereby submits its Counter-Claim against Counter-Defendants Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., and Seton Medical Center (collectively, "VHS") and alleges as follows:

OVERVIEW

1. Before the instant litigation, VHS owned and operated four failing hospitals: St. Francis Hospital in Lynwood, CA; St. Vincent Medical Center, in Los Angeles, CA; Seton Hospital in Daly City, CA; and Seton Medical Center Coastside in Moss Beach, CA. On August 31, 2018, VHS filed for Chapter 11 bankruptcy and sought to sell these hospitals' assets.

2. In January 2019, SGM agreed to buy the four hospitals and their assets from VHS for a sale price of $610 million, subject to certain adjustments (which would be substantial), via a stalking horse bid, in an effort to stem the losses, revitalize the hospitals, and allow them to continue to serve their communities. After applying its business strategies, SGM expected to obtain a substantial profit from the purchase. To that end, on January 8, 2019, SGM and VHS entered into an Asset Purchase Agreement ("APA") that set forth the parties' rights and obligations in connection with the sale. SGM made a $30 million good faith deposit upon entering the APA.

3. Unbeknownst to SGM, VHS's operation of the hospitals in 2019 was nothing short of disastrous. Indeed, after wrongfully terminating the APA with SGM, VHS filed a motion to close St. Vincent. In that motion, VHS disclosed that its mismanagement of St. Vincent has caused the hospital to sustain financial losses of "more than $65 million in fiscal year 2019 alone," and that the hospital's "operating losses are significant and unsustainable."

4. But, VHS not only mismanaged its hospitals. After entering the APA, SGM also discovered that VHS had been illegally operating St. Vincent in violation of

California law. When SGM confronted VHS with evidence of its violations, VHS did not even *attempt* to address the deficiencies. Rather, VHS denied the deficiencies existed and then repudiated their obligation to satisfy the conditions precedent in the APA.

5. Despite being well aware that it had not satisfied the APA's conditions precedent, including the conditions in sections 8.6 and 8.7 of the APA, VHS falsely represented that they had satisfied the conditions with the goal of: (1) forcing SGM to complete a sale without receiving the full consideration it was promised and/or (2) manufacturing a false claim that SGM breached an obligation to close as a pretext to terminate the APA and retain SGM's good faith $30 million deposit. Specifically, on November 20, 2019, VHS sent SGM a letter falsely representing that VHS had satisfied the conditions and demanding that SGM close on the sale on December 5, 2019. VHS did so, *despite* the fact that it had not complied with its contractual obligations and the conditions precedent to closing the sale, including, but not limited to: obtaining court authorization to transfer VHS's Medicare and Medi-Cal provider agreements pursuant to settlement agreements with the Centers for Medicare and Medicaid Services ("CMS" for Medicare) and the California Department of Health Care Services ("DHCS" for Medi-Cal), respectively; failing to respond to building and safety code violations and seismic compliance; and other contractual obligations discussed below. VHS's satisfaction of these obligations is not only contractually required, but also was essential to SGM's successful operation of the four hospitals and provision of healthcare services to the public.

6. Although SGM repeatedly informed VHS that VHS had not satisfied its obligations, VHS nevertheless continued its illegitimate effort to unjustly enrich itself on December 17, 2019 when it unilaterally announced that it was terminating the APA without returning SGM's $30 million deposit.

7. In sum, VHS: (1) failed and refused to honor its contractual obligations to SGM and repudiated the conditions in the APA; (2) nevertheless demanded that SGM

immediately close the sale; (3) wrongfully terminated the APA; and (4) wrongfully retained SGM's $30 million deposit and interest.

JURISDICTION AND VENUE

8. The United States District Court for the Central District of California has subject matter jurisdiction over SGM's Counter-Claim pursuant to 28 U.S.C. §1334 and pursuant to the District Court's Order Granting Motion to Withdraw Reference, entered on Mach 5, 2020.

9. Venue for this adversary proceeding is proper pursuant to 28 U.S.C. § 1409.

PARTIES

10. Strategic Global Management, Inc. ("SGM") is a California corporation, with its principal place of business in Corona, California.

11. Verity Health Systems of California, Inc. is a California corporation with its principal place of business in Los Angeles, California.

12. Verity Holdings, LLC is a California limited liability company with its principal place of business located at 1850 Sullivan Avenue in Daly City, California.

13. St. Francis Medical Center is a California corporation with its principal place of business in Los Angeles, California. St. Francis engages in the business of the operation of the hospital known as St. Francis Medical Center, located at 3630 E. Imperial Highway, Lynwood, CA 90262, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Francis.

14. St. Vincent Medical Center and St. Vincent Dialysis Center, Inc. are California corporations with their principal place of business in Los Angeles, California. Before its closure, St. Vincent engaged in the business of the operation of the hospital known as St. Vincent Medical Center, located at 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency

department as well as through the medical office buildings and clinics owned or operated by St. Vincent.

15. Seton Medical Center is a California corporation. Seton engages in the business of the operation of two general acute care hospitals consisting of: (i) the hospital known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton and (ii) the hospital known as Seton Medical Center Coastside, located at 600 Marine Blvd, Moss Beach, CA 94038, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton.

GENERAL ALLEGATIONS

16. On August 31, 2018, VHS filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Central District of California.

17. On or about January 8, 2019, SGM and VHS entered into an Asset Purchase Agreement.

18. Pursuant to APA Section 1.2, SGM wired a $30,000,000 deposit into VHS's bank account.

I. THE APA'S KEY PROVISIONS

19. The APA contains several key provisions governing the parties' conduct with respect to the sale. Several of these provisions are set forth below.

A. The APA Conditions Closing on VHS's Satisfaction of Its Contractual Obligations

1. APA Section 1.3

20. APA Section 1.3 conditions the closing of the transactions contemplated by the APA on the parties' satisfaction of their obligations under APA Articles 7 and 8. Specifically, Section 1.3 states as follows:

> 1.3 Closing Date. The consummation of the transactions contemplated by this Agreement (the "Closing") shall take place at 10:00 a.m. local time at the offices of Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017-5704 (the day on which Closing actually occurs, the "Closing Date") promptly but no later than ten (10) business days ***following the satisfaction or waiver of the conditions set forth in ARTICLE 7 and ARTICLE 8***, other than those conditions that by their nature are to be satisfied at Closing but subject to fulfillment or waiver of those conditions. The Closing shall be deemed to occur and to be effective as of 11:59 p.m. Pacific time on the Closing Date (the "Effective Time").

(APA, § 1.3, emphasis added.)

21. Lest there be any doubt, Article 8 also expressly states:

> Purchaser's obligation to purchase the Assets and to close the transactions contemplated by this Agreement ***shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Purchaser*** in whole or in part at or prior to the Closing.

(APA, Article 8, emphasis added.)

2. APA Section 8.4 – Performance of Covenants

22. APA section 8.4 conditions the closing of the transaction upon VHS's material performance and compliance with all of its obligations, covenants, agreements and conditions under the APA. Specifically, Section 8.4 states:

> 8.4 Performance of Covenants. ***Sellers shall have in all material respects performed or complied with each and all of the obligations, covenants, agreements and conditions required to be performed or complied with by Sellers on or prior to the Closing Date***; provided, however, this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would have a Material Adverse Effect.

(APA, § 8.4, emphasis added).

3. APA Section 4.6 – Conduct of the Business

23. APA section 4.6 required VHS to use commercially reasonable efforts to maintain the value of the hospitals and to comply with the law. Specifically, section 4.6 states:

> 4.6 Conduct of the Business. From the Signing Date until the Closing, or the earlier termination of this Agreement, without the prior written consent of Purchaser, Sellers shall, with respect to the ownership of the Assets and the operation of the Hospitals, use commercially reasonable efforts to, in each case except as would not have a Material Adverse Effect (except as otherwise noted):
>
> (a) without regard to Material Adverse Effect, carry on Sellers' ownership of the Assets and the operation of the Hospitals consistent with past practice, but subject to the Bankruptcy Cases and Sellers' obligations and actions in connection therewith;
>
> (b) maintain in effect the insurance and equipment replacement coverage with respect to the Assets;
>
> (c) if and as permitted by the Bankruptcy Court, pay any bonuses payable under the Key Employee Retention Plan and Key Employee Incentive Plan of Sellers;
>
> (d) maintain the Assets in materially the same condition as at present, ordinary wear and tear excepted;
>
> (e) perform its obligations under all contracts with respect to the Assets in compliance with the Bankruptcy Code;
>
> (f) following entry of the Sale Order, permit and allow reasonable access by Purchaser and its representatives (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-Closing employment to any of Sellers' personnel (including access by Purchasers and their representatives for the purpose of conducting open enrollment sessions for Purchasers' employee benefit plans and

> programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;
>
> (g) with respect to material deficiencies, if any, cited by any governmental authority (other than the Attorney General of the State of California and other than with respect to Seismic requirements) or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction that is acceptable to such governmental authority or such accreditation body;
>
> (h) timely file or cause to be filed all material reports, notices and tax returns required to be filed and pay all required taxes as they come due;
>
> (i) without regard to Material Adverse Effect, beginning on February 21, 2019 and in accordance with the Sellers' budget under their debtor in possession financing, timely pay any fees that are or become due and payable under QAF IV and QAF V;
>
> (j) comply in all material respects with all Legal Requirements (including Environmental Laws) applicable to the conduct and operation of the Hospitals; and
>
> (k) without regard to Material Adverse Effect, maintain all material approvals, permits and environmental permits relating to the Hospitals and the Assets.

(APA § 4.8).

4. APA Sections 2.8 & 2.10 Representations and Warranties with Respect to Compliance with Legal Requirements and Environmental Matters.

24. Under APA Article 2, Sections 2.8 and 2.10, VHS warranted and covenanted to SGM that the hospitals were in material compliance with all applicable laws and environmental regulations. Specifically sections 2.8 and 2.10 state:

> Article 2: REPRESENTATIONS AND WARRANTIES OF SELLERS

> "Each Seller hereby represents, warrants and covenants to Purchaser, severally (and not jointly) with respect to such Seller that the following matters are true and correct as of the Signing Date…
>
> 2.8 Compliance with Legal Requirements. Except as set forth in Schedule 2.8, to the knowledge of Sellers: each Seller, with respect to the operation of the Hospitals, is in material compliance with all applicable laws, statutes, ordinances, orders, rules, regulation, policies, guidelines, licenses, certificates, judgments or decrees of all judicial or governmental authorities (federal, state, local, foreign or otherwise) (collectively, "**Legal Requirements**")…
>
> 2.10 Environmental Matters… (b) Except as disclosed in Schedule 2.10(b), to the knowledge of Sellers, the operations of the Hospitals are not in material violation of any applicable limitations, restrictions, conditions, standards, prohibitions, requirements and obligations of Environmental Laws and related orders of any court or any other governmental authority."

5. APA Section 8.6 – Attorney General Provisions

25. A critical component of the Sale negotiations between VHS and SGM was the need to anticipate and address, in the APA, the prospect that the California Attorney General ("AG"), in evaluating the proposed sale to SGM, might attach conditions that would impose costs on the purchaser that would effectively be "deal killers." To address those concerns, the parties negotiated Section 8.6 of the APA ("Section 8.6") to deal with what was termed "Additional Conditions." The relevant portion of Section 8.6 is below.

> 8.6 Attorney General Provisions . . . . In the event the CA AG imposes conditions on the transactions contemplated by this Agreement, or on Purchaser in connection therewith, which are materially different than the Purchaser Approved Conditions set forth on Schedule 8.6 (the "Additional Conditions"), Sellers shall have the opportunity to file a motion with the Bankruptcy Court seeking the entry of an order ("Supplemental Sale Order") finding that the Additional Conditions are an "interest in property" for purposes of 11

U.S.C. § 363(f), and that the Assets can be sold free and clear of the Additional Conditions without the imposition of any other conditions, which would adversely affect the Purchaser . . . . If Sellers determine not to seek such Supplemental Sale Order, or fail to obtain such Supplemental Sale Order within 60 days of the Attorney General's imposition of Additional Conditions, Purchaser shall be entitled to terminate this Agreement and receive the return of its Good Faith Deposit. ***If Sellers timely obtain such Supplemental Sale Order from the Bankruptcy Court or another court, Purchaser shall have a period of 21 business days from the entry of such order (the "Evaluation Period") to determine, in the exercise of the Purchaser's reasonable business judgment and in consultation with Purchaser's financing sources, whether to proceed to consummate the transactions contemplated by this Agreement*** . . . . For the avoidance of doubt, if the Debtors or any of the Consultation Parties dispute the reasonableness of the exercise of the Purchaser's business judgment, such dispute shall be determined by the Bankruptcy Court only in the context of an adversary proceeding. If, at the conclusion of the Extended Evaluation Periods, such Supplemental Sale Order has not become a final, non-appealable order and Purchaser determines not to proceed, Purchaser shall have the right within ten (10) business days after the conclusion of the Extended Evaluation Periods to terminate this Agreement and receive the return of its Good Faith Deposit . . . . For purposes of this Section 8.6, "a final, non-appealable order" shall include a Supplemental Sale Order (i) which has been affirmed or the appeal of which has been dismissed by any appellate court and for which the relevant appeal period has expired (other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied . . . . For the avoidance of doubt, neither this provision, nor any of the rights granted to the Purchaser herein, shall constitute a waiver of any party in interest's right to argue that any appeal from the Sale Order should be dismissed on statutory, Constitutional or equitable mootness grounds.

(APA § 8.6, emphasis added).

26. Fundamental to SGM's agreement to the language of Section 8.6 was the creation of an "Evaluation Period" of 21 business days, which would start from the entry of the "Supplemental Sale Order." Because no one knew when they entered into the APA whether the bankruptcy court would enter a Supplemental Sale Order or what it would say, SGM required an "Evaluation Period" to ensure that it would not be obligated to close the transaction if, in the exercise of its reasonable business judgment, and after consultation with its funding sources, the Supplemental Sale Order was not satisfactory.

6. APA Section 8.7 – Medicare and Medi-Cal Provider Agreements

27. APA Section 8.7 conditions SGM's obligation to close on Verity's transferring of its Medicare and Medi-Cal provider agreements pursuant to settlements with the Centers for Medicare and Medicaid Services and the California Department of Health Care Services. Specifically, Section 8.7 states:

> 8.7 Medicare and Medi-Cal Provider Agreements. Sellers shall transfer their Medicare provider agreements ***pursuant to a settlement agreement*** with the Centers for Medicare and Medicaid Services ("CMS") and shall transfer their Medi-Cal provider agreements ***pursuant to a settlement agreement*** with the California Department of Health Care Services ("DHCS"), which such settlement agreements shall result in: (i) resolution of all outstanding financial defaults under any of Sellers' Medicare and Medi-Cal provider agreements and (ii) ***full satisfaction, discharge, and release of any claims under the Medicare or Medi-Cal provider agreements, whether known or unknown, that CMS or DHCS, as applicable has against the Seller or Purchaser*** for monetary liability arising under the Medicare or Medi-Cal provider agreements before the Effective Time; . . .

(APA § 8.7, emphasis added).

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7. Section 11.2 – Damages for Sellers' Breach

28. Under APA Section 11.2, if VHS commits any material default under the APA, SGM is entitled to the return of its $30 million dollar deposit and may pursue its legal rights and remedies against VHS.

> 11.2 Seller Default. If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

(APA § 11.2).

II. VHS DEPLOYS ITS SCHEME TO FORCE A SALE AND BREACHES THE APA.

29. Between January and the fall of 2019, SGM and VHS worked constructively towards a closing of the Sale under the APA. These efforts included, among others, SGM's: negotiation and ultimate agreements with six (6) labor unions to modify their respective collective bargaining agreements; analysis of hundreds of executory contracts, including those with health plans, medical practice groups, independent physician associations (IPAs), vendors and suppliers, to be assumed and assigned to SGM upon closing; and the drafting of numerous separate agreements, such as an interim management agreement and sale-leaseback agreement, which would need to be completed and put in place at the time of closing. To that end, SGM devoted substantial financial resources to hire consultants, attorneys, and other expert and in-house personnel to address these and a myriad of other issues.

30. In contrast, by the fall of 2019, VHS realized that it had not met its contractual obligations to SGM under Section 8.6 and Section 8.7 of the APA. VHS also recognized that in light of the APA provision in section 9.1(i) allowing either party who was not in breach to terminate the APA without recourse if the sale had not closed as of December 31, 2019, VHS' failure to have satisfied all closing conditions would provide SGM, at a minimum, with an opportunity to terminate the APA on

December 31 or renegotiate its terms. Thus, VHS developed a strategy to attempt to manufacture a breach (albeit artificial) by SGM which would give VHS a pretext to terminate the contract and keep SGM's $30 million deposit.

A. VHS Fails to Satisfy Its Obligations Under Section 8.6.

31. On September 25, 2019, the AG rendered his Decision regarding the proposed transfer of VHS's four hospitals to SGM, in which he imposed Additional Conditions, as defined in Section 8.6.

32. In light of the fact that SGM was going to be investing hundreds of millions of dollars into the purchase and would likely be spending substantial additional funds in addressing the historical enormous operating losses of the hospitals, it was of paramount importance to SGM to obtain a complete, unambiguous and unequivocal elimination of the "Additional Conditions."

33. On September 30, 2019, VHS filed a motion seeking an order from the bankruptcy court that the Additional Conditions could not be imposed upon or enforced against SGM following the closing of the transaction (the "Enforcement Motion"). SGM supported the Enforcement Motion because the Additional Conditions sought by the AG would have resulted in, literally, hundreds of millions of dollars of *additional* costs to SGM.

34. The AG was a formidable adversary and, not surprisingly, filed a thorough and comprehensive opposition to the Enforcement Motion, in which he presented compelling legal arguments concerning, among other things, a challenge to the bankruptcy court's authority to impose its judgment over that of the AG with regard to the AG's discretionary authority to approve, disapprove or approve with conditions, an application to transfer the assets of a non-profit hospital to a for-profit entity.

35. In light of the AG's vigorous opposition, SGM and VHS anticipated that if the bankruptcy court were to rule in favor of the Debtors, the AG would likely appeal. Indeed, the bankruptcy court, itself, recognized the significance of its decision

to rule in favor of the Enforcement Motion when, in the bankruptcy court's Memorandum Decision to grant the Enforcement Motion, the court certified its decision for a direct appeal to the Ninth Circuit.

36. Following the entry of the bankruptcy court's Memorandum of Decision and prior to the submission of an Order, the AG proposed to VHS that he would waive his right to appeal from the bankruptcy court's ruling (which at that time consisted only of a Memorandum Decision, with no order having been entered) if VHS would agree: (1) the bankruptcy court's Memorandum Decision would be vacated, and (2) in lieu of a more comprehensive and expansive order consistent with the bankruptcy court's Memorandum Decision, the parties would submit a "simple" order granting the Motion. On information and belief, doing so would benefit the AG by curtailing the use of the bankruptcy court's decision as precedent in future cases.

37. Subsequently, negotiations took place among the VHS, the AG, and SGM regarding the form of order regarding the settlement proposed by the AG. During an approximately 10-day period, the parties exchanged multiple forms of orders. During this process, the AG took a "take it or leave it" position in the negotiations and represented that his final proposed form of order had been approved at the highest level of the AG's office and that the attorneys who were engaged in the negotiations had no authority to make further changes.

38. The AG's proposed form of order was unacceptable to SGM.

39. Nevertheless, on November 8, 2019, VHS proceeded to enter into a stipulation with the AG (to which SGM was not a party) and submitted the form of order negotiated by the AG and VHS and requested immediate entry.

40. SGM promptly objected to the AG Settlement on November 11, 2019. [Docket No. 3852]. In its objection, SGM demonstrated that the proposed order that VHS and the AG had agreed on was stilted, convoluted, internally inconsistent, ambiguous, and would not provide SGM the protection to which it was entitled under

the APA and which was essential for SGM to proceed with a transaction of the size and scope of its acquisition of the four hospitals.

41. On November 13, 2019, the bankruptcy court conducted a hearing to consider SGM's Objection to the proposed form of order regarding the settlement between VHS and the AG. At that time, the AG again reiterated his inability (or unwillingness) to negotiate any changes to the proposed order, with the exception of one grammatical edit, which counsel for the AG offered from the podium. At the conclusion of the hearing, the bankruptcy court approved the proposed order resulting from the settlement between the Debtors and the AG.

42. On November 14, 2019, the bankruptcy court entered an order stating that the assets could be sold without the AG's additional conditions. 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.

43. SGM timely appealed the bankruptcy court Order on November 29, 2019. The order remained on appeal until June 10, 2020, when the District Court vacated the order. For these reasons, including that this now vacated order was neither final nor non-appealable when VHS demanded the close on November 20, VHS failed to satisfy the condition in APA Section 8.6.

B. VHS Fails to Satisfy Its Obligations Under Section 8.7.

44. As set forth above, APA Section 8.7 obligated VHS to transfer its Medi-Care and Medi-Cal provider agreements to SGM pursuant to "settlement agreements" with the Centers for Medicare and Medicaid Services ("CMS") and the California Department of Health Care Services ("DHCS"). Despite this plain language, VHS did not comply with this obligation.

45. As of the commencement of their Chapter 11 cases, VHS 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.

46. On March 22, 2019, DHCS filed an objection to the proposed sale to SGM, arguing that the Medi-Cal provider agreements between it and VHS 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 VHS cured the unpaid HQAF and fee-for-service overpayments. These claims totaled tens of millions of dollars.

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

48. 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. However, the court did not rule on the dispute between VHS 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.

(Docket No. 2306).

49. 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. DHCS claimed that it was owed in excess of $70 Million for unpaid HQA Fees and for reimbursement of fee for service overpayments which would have to be "cured" before the Provider Agreements could be transferred to SGM. In its renewed objection, DHCS stated:

> Debtors' Medi-Cal Provider Agreements (hereafter, Agreements) are executory contracts that must be assumed and assigned to the Buyer. For the intended assumption and assignment to occur, either Debtors must pay all of the outstanding HQA Fees incurred before the closing of the sale or any outstanding I-IQA Fees on Debtors' account must be paid by the Buyer through joint and severally liability. In addition to the HQA Fee debt, Debtors and/or the Buyer must also reimburse the Department for any Medi-Cal overpayment and pay other debts owed to the Department.

(Docket No. 3043).

50. Rather than work with DHCS towards a settlement (as required under the APA), VHS contested DHCS's characterization of the Medical Provider Agreements as executory contracts. To that end, VHS once again argued that the Provider Agreements could be transferred free and clear of any liens without compliance with Bankruptcy Code section 365. VHS also conceded it needed to provide SGM with such a transfer to satisfy the APA.

51. 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). However, the court did not decide whether DHCS could retain its recoupment rights, which would have allowed DHCS to recover its claims against VHS from monies otherwise payable to SGM post-closing. Preservation of such recoupment rights would have prevented VHS 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 VHS to transfer the Provider Agreements free and clear of any DHCS claims of liability.

52. VHS lodged its proposed order with respect to the Memorandum of Decision on October 8, 2019. Despite the court's clear statement that it was not deciding the recoupment issue, VHS 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.

53. The next day, on October 9, 2019, DHCS objected to VHS's proposed order, arguing 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." (Docket No. 3330).

54. On October 11, 2019, the bankruptcy court agreed with DHCS that VHS's proposed order was overreaching. Contrary to VHS's Proposed Order, the bankruptcy court stated, "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. (Docket No. 3372 at fn. 2).

55. On October 11, 2019, the bankruptcy 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. Specifically, the bankruptcy court stated:

> Provided, however, that nothing in this paragraph shall be construed to limit whatever rights DHCS may or may not have to withhold, under principles of equitable recoupment, payments owed by DHCS to the Debtors and or the SGM Buyers, for the purpose of recovering alleged Pre-Transfer Effective Date Liabilities under or related to the Medi-Cal Program and/or HQAF Program.

(Docket No. 3372). 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 VHS demanded that SGM close on November 20, 2019.

C. VHS Falsely Represents that It Satisfied the Conditions to Close and Improperly Demands that SGM Close the Sale On or Before December 5, 2019.

56. On November 20, 2019, VHS, through its counsel of record Samuel Maizel of Dentons, sent SGM a letter representing that it had satisfied all conditions to close as of November 19, 2019 and demanding that SGM close the sale by December 5, 2019 or be deemed in breach of the APA.

57. Mr. Maizel's letter contained, at minimum, two erroneous assertions with respect to VHS's satisfaction of APA Sections 8.6 and 8.7.

58. First, although the bankruptcy court's now-vacated order approving VHS's agreement with the AG was not final, and the appeal period had not expired, Mr. Maizel stated that Section 8.6 of the APA had been satisfied by the bankruptcy court's November 18, 2019 memorandum of decision (Docket No. 3632). The bankruptcy court's Order entered November 18, 2019 regarding VHS's purported compliance with Section 8.6 was not final and non-appealable as of November 20, 2019, and has been vacated pursuant to the District Court's order for June 10, 2020.

59. Second, Mr. Maizel suggested that Section 8.7 had been satisfied because VHS claimed: "Yesterday, as we notified you, the Debtors reached a settlement agreement with the United States, on behalf of Department of Health and Human Services and the Centers for Medicare and Medicaid Services, allowing for the transfer of the Medicare Provider Agreement without successor liability."

60. Mr. Maizel's letter does not mention any settlement with DHCS with respect to the recoupment issue left open by the court's October 11, 2019 order. Indeed, no such settlement existed.

D. SGM Notifies VHS of Its Failures.

61. On November 22, SGM wrote two letters to VHS and advised it of its noncompliance with its obligations and conditions under the APA. SGM's letters set forth with specific detail that VHS had failed to satisfy numerous obligations under the

APA, including, but not limited to: (1) VHS's failure to comply with legal requirements applicable to the conduct and operation of its hospitals; (2) VHS's failure to obtain the approval of the Office of Statewide Health Planning and Development ("OSHPD") for the operation of several hospital facilities; (3) VHS's failure to satisfy the conditions of APA Section 8.7 with respect to the Medicare and Medi-Cal provider agreement transfers; (4) VHS's failure to satisfy the conditions of APA Section 8.6; (5) VHS's failure to respond to building and safety code violations and seismic compliance at St. Vincent and Seton hospitals; (6) other specifically enumerated regulatory issues; (7) the substantial and material deterioration of the net patient revenue of the hospitals; (8) the substantial and material impairment of accounts receivable; (9) VHS's failure to reserve and to disclose its failure to reserve for its accrued obligations to Independent Practice Associations, Health Plans and "Downstream Providers"; and (10) VHS's incurrence of post-petition liability.

62. In addition to discussing VHS's noncompliance, SGM's November 22 letters specifically advised VHS that:

> This letter shall also constitute further notice, pursuant to APA section 8.4, of Verity's failure to perform certain conditions, agreements and covenants, which Verity is required to perform as a condition of SGM's obligation to Close, and the failure to perform will result in a Material Adverse Effect.

63. VHS refused to address the noncompliance issues identified in SGM's November 22, 2019 letters. Instead, VHS wrote to SGM on November 25, 2019 and offered excuses and equivocations for its noncompliance that had no merit. For example, with respect to Section 8.7, VHS, again through its counsel Samuel Maizel, stated:

> With respect to California Department of Health Care Services ("DHCS"), you acknowledge that the Debtors secured an Order [Docket No. 3372] from the Bankruptcy Court authorizing the transfer of the Medi-Cal Agreement free and clear of any interests asserted by DHCS, in addition to the Sale Order which terminated any creditor's recoupment rights

[Docket No. 2306]. Those Orders afford equal or greater protection to SGM than any settlement could have, thereby satisfying Section 8.7. In any event, a settlement with DHCS was reached on November 22, so there is no reason to debate this point further.

64. As set forth below, VHS's representations with respect to its alleged satisfaction of Section 8.7 were false. To wit:

(a) Despite claiming otherwise in its November 20, 2019 letter, VHS had not, as of November 20, 2019, entered into a settlement agreement with DHCS which resulted in: (1) resolution of all outstanding financial defaults under any of VHS's Medi-Cal Provider Agreements, and (2) full satisfaction, discharge and release of any claims under the Medi-Cal Provider Agreements, whether known or unknown that DHCS had against the seller or purchaser;

(b) Despite claiming otherwise in its November 20, 2019 letter, VHS, through its counsel of record, acknowledged to the bankruptcy court at a hearing on November 26, 2019, that it had not entered into a final settlement agreement with DHCS; and

(c) Despite claiming otherwise, neither the bankruptcy court's order of May 2, 2019 or October 11, 2019 provided SGM with the protection to which it was entitled under APA Section 8.7.

65. Indeed, VHS had not entered into a settlement agreement with DHCS, as of December 5, 2019, the time VHS set for closing. Instead, VHS entered into an agreement with DHCS, *four days later*, on December 9, 2019. VHS's December 9, 2019 settlement with DHCS occurred *after* VHS had already breached the APA by demanding a false notice of closing for December 5, 2019, and thus, could not have satisfied VHS's obligations under Section 8.7 or provided a basis upon which VHS could demand that SGM close the sale. Even this new belated agreement did not satisfy Section 8.7.

III. VHS WRONGFULLY "TERMINATES" THE APA.

66. Knowing that it could not satisfy its closing obligations, on December 17, 2019, VHS, by and through its counsel of record, sent SGM a letter entitled "Notice of Termination Effective Date." By this letter, VHS claimed that, "the APA will terminate effective December 27, 2019."

67. VHS has also wrongfully withheld SGM's $30 million deposit and refused all efforts by SGM to attempt to address the numerous problems created by VHS and to close the sale.

FIRST CAUSE OF ACTION

(Breach of Contract)

(All Counter-Defendants)

SGM reasserts and incorporates herein by reference the allegations contained in Paragraphs 1 through 67 above.

68. VHS and SGM entered into a valid contract, the APA.

69. SGM has performed all of the terms and conditions required of it under the APA, except as excused by VHS's prevention of performance, breaches, and/or repudiation.

70. VHS has materially breached the APA, including but not limited to by: (1) on November 20, 2019, demanding that SGM close the transaction despite the fact that VHS had not satisfied its obligations and conditions to closing; (2) failing to comply with legal requirements applicable to the conduct and operation of its hospitals; (3) failing to obtain the approval of the Office of Statewide Health Planning and Development ("OSHPD") for the operation of several hospital facilities; (4) refusing to properly satisfy the conditions of APA Section 8.7 with respect to the Medicare and Medi-Cal provider agreement transfers; (5) failing to satisfy the conditions of APA Section 8.6; (6) failing to respond to building and safety code violations and seismic compliance at St. Vincent and Seton hospitals; (7) violation of other specifically enumerated regulatory issues as set forth in the parties'

correspondence; (8) allowing and precipitating the substantial and material deterioration of the net patient revenue of the hospitals; (9) allowing and precipitating the substantial and material impairment of accounts receivable; (10) failing to reserve and to disclose its failure to reserve for its accrued obligations to Independent Practice Associations, Health Plans and "Downstream Providers"; (11) incurring post-petition liability without accounting for such to SGM; and (12) wrongfully withholding SGM's $30 million dollar deposit.

71. VHS has further breached the APA by repudiating the contract and refusing to perform thereunder, including, without limitation, by improperly terminating the agreement in its December 17, 2019 letter entitled "Notice of Termination Effective Date."

72. As a result of VHS's breaches, SGM has sustained substantial harm in an amount to be proven at trial including, but not limited to, the wrongful retention of its $30 million deposit and accumulated interest, additional out-of-pocket damages, including professional fees, in an amount in excess of $13 million, plus substantial lost profits, and other damages resulting from VHS's failure to comply with its contractual obligations.

73. VHS's breaches of the APA were a substantial factor in causing SGM's harm.

SECOND CAUSE OF ACTION

(Breach of The Implied Covenant of Good Faith and Fair Dealing)

(All Counter-Defendants)

SGM reasserts and incorporates herein by reference the allegations contained in Paragraphs 1 through 73 above.

74. Implicit in the contract between SGM and VHS was a covenant that VHS would use its best efforts to give effect to the terms of the APA.

75. This implied covenant required VHS to act in good faith at all times in an attempt to ensure that SGM received the benefits of the APA.

76. VHS breached this implied covenant of good faith and fair dealing by deliberately acting to deprive SGM of the benefits of the APA and by purposefully interfering in the performance of the APA such that it materially harmed SGM. VHS did so including by: (1) failing to comply with legal requirements applicable to the conduct and operation of its hospitals; (2) failing to obtain the approval of the Office of Statewide Health Planning and Development ("OSHPD") for the operation of several hospital facilities; (3) refusing to satisfy the conditions of APA Section 8.7 with respect to the Medicare and Medi-Cal provider agreement transfers; (4) failing to satisfy the conditions of APA Section 8.6; (5) failing to respond to building and safety code violations and seismic compliance at St. Vincent and Seton hospitals; (6) violation of other specifically enumerated regulatory issues as set forth in the parties' correspondence; (7) allowing and precipitating the substantial and material deterioration of the net patient revenue of the hospitals; (8) allowing and precipitating the substantial and material impairment of accounts receivable; (9) failing to reserve and to disclose its failure to reserve for its accrued obligations to Independent Practice Associations, Health Plans and "Downstream Providers"; (10) incurring post-petition liability without accounting for such to SGM; (11) wrongfully withholding SGM's $30 million dollar deposit; and (12) on November 20, 2019, issuing to SGM an improper demand to close based on the false representation that all closing conditions had been satisfied.

77. As a result of VHS's breaches of the implied covenant of good faith and fair dealing, SGM has sustained substantial harm in an amount to be proven at trial including, but not limited to, the wrongful retention of its $30 million deposit and accumulated interest, additional out-of-pocket damages, including professional fees, in an amount in excess of $13 million, plus substantial lost profits, and other damages resulting from VHS's failure to comply with its obligations.

78. VHS's breaches of the APA were a substantial factor in causing SGM's harm.

THIRD CAUSE OF ACTION

(Conversion)

(All Counter-Defendants)

SGM reasserts and incorporates herein by reference the allegations contained in Paragraphs 1 through 78 above.

79. As set forth in detail above, SGM was entitled to the immediate return of its $30 million deposit pursuant to the APA, including but not limited to Section 11.2 of the APA, upon VHS's material breach of the contract. Indeed, SGM demanded return of its deposit via a December 5, 2019 letter to VHS. Nonetheless, VHS has wrongfully retained possession of SGM's $30 million deposit without SGM's permission or authorization, thereby depriving SGM of the use, enjoyment and benefit of the funds.

80. As a proximate result of VHS's wrongful decision to retain SGM's $30 million deposit, VHS has caused SGM to suffer damages in an amount to be proven at trial.

81. Additionally, as a direct and proximate cause of VHS's conversion of SGM's $30 million deposit, VHS has been unjustly enriched in an amount to be determined at trial, and SGM will continue to sustain actual damages in an amount to be proven at trial.

82. Each of the aforementioned acts was done willfully and maliciously, with the deliberate intent to injure SGM and with the conscious disregard of SGM's rights, thus entitling SGM to an award of punitive damages in an amount commensurate with VHS's conduct and appropriate to deter others from engaging in similar misconduct.

FOURTH CAUSE OF ACTION

(Violation of Cal. Bus. & Prof. Code § 17200)

(All Counter-Defendants)

SGM reasserts and incorporates herein by reference the allegations contained in Paragraphs 1 through 82 above.

83. California's Unfair Business Practices Act, Bus. & Prof. Code § 17200, *et seq.* ("UCL") prohibits acts of unfair competition including any "unlawful, unfair, or fraudulent business act or practice."

84. VHS has engaged in unfair, unlawful, and/or fraudulent business acts or practices, as described herein.

85. As a direct and proximate result of VHS's violation of the UCL, VHS has obtained money (in an amount to be proven at trial) that should have been paid and rightfully belongs to SGM, for which VHS should be required to make restitution to SGM pursuant to Cal. Bus. & Prof. Code § 17203.

PRAYER FOR RELIEF

WHEREFORE, SGM requests the following relief:

1. For special and consequential damages as set forth above and in an amount to be proven at trial;
2. Restitution from VHS to SGM of SGM's $30 million deposit and interest;
3. Litigation costs and attorneys' fees; and
4. On the Third Cause of Action, punitive damages in an amount to punish or make an example of VHS's conduct;
5. Pre-judgment and post-judgment interest allowed by law;
6. All other appropriate relief the Court deems just and proper.

BARNES & THORNBURG LLP

Dated: July 10, 2020

By: /s/ Kevin D. Rising
Kevin D. Rising
L. Rachel Lerman
Joel R. Meyer

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DEMAND FOR JURY TRIAL

Defendants and Counter-Plaintiff SGM hereby demand a jury trial on all issues herein.

BARNES & THORNBURG LLP

Dated: July 10, 2020

By: /s/ Kevin D. Rising
Kevin D. Rising
L. Rachel Lerman
Joel R. Meyer

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