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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' REPLY IN SUPPORT OF 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

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I. INTRODUCTION

Plaintiffs' allegations and matters indisputably subject to judicial notice confirm that on November 20, 2019 Plaintiffs improperly noticed a close of the transaction for December 5, 2019 and then improperly terminated the parties' APA based on SGM's alleged failure to close on Plaintiffs' chosen date. Revealingly, Plaintiffs spend more time in their Opposition arguing why the Court should ignore this reality rather than showing they actually have a viable claim. As explained below, Plaintiffs do not.

Plaintiffs' claims fail because the facts the Court can properly consider establish that Plaintiffs did not satisfy the conditions precedent to Defendants' obligation to close including the conditions stated in Sections 8.6 and 8.7 of the APA. Plaintiffs' fraud and "tortious breach" claims also fail as a matter of law.

II. PLAINTIFFS' FAC SHOULD BE DISMISSED WITH PREJUDICE.

A. Defendants Met and Conferred with Plaintiffs.

Plaintiffs begin with a red herring about Defendants' alleged failure to meet and confer in compliance with Rule 7-3. Plaintiffs' argument is highly misleading.

It is undisputed that the parties met and conferred regarding this motion in March 2020 before they agreed to stay the action pending this Court's resolution of SGM's appeal, which asked this Court to address many of the same substantive issues in play in the adversary proceeding. *See* Dkt Nos. 43 & 58 (2:19-cv-10352-DSF). Indeed, the parties twice *stipulated* that Defendants had met and conferred in compliance with Local Rule 7-3. Dkt. 33 at ¶ I; Dkt. 35 at ¶ H. ("Pursuant to Local Rule 7-3, Defendants met and conferred with Plaintiffs regarding their intention to file a new motion to dismiss the First Amended Complaint.")

Plaintiffs nonetheless argue that Defendants failed to comply because they did not seek to meet and confer *again* after this Court ruled on the Appeal. However, the parties' agreement to meet and confer post-appeal was premised on the expectation that the Court's ruling would have an impact on this litigation.

Instead, the Court ruled that the Appeal was constitutionally moot. Given nothing changed and the parties had already met and conferred on the Motion, Defendants proceeded with their Motion. Plaintiffs never suggested there was reason to meet again regarding the issues discussed in March or indicated that they wished to amend their complaint again. Meyer Decl. ¶2-4. The Court should reject Plaintiffs' "gotcha" effort to avoid reckoning with the fundamental problems with their FAC.

B. Plaintiffs Did Not Satisfy the Conditions Set Forth in APA Sections 8.6 and 8.7.

Plaintiffs argue this Court need not look beyond their general allegation that they satisfied all conditions. This is incorrect. When ruling on a motion to dismiss, courts "must consider the complaint in its entirety" and "matters of which a court may take judicial notice." *Tellabs, Inc. v. Makor Issues & Rights, Ltd.,* 551 US 308, 322 (2007); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 689 (9th Cir. 2001) (court "may take "judicial notice of 'matters of public record."). Courts are also not "required to accept as true allegations that contradict exhibits attached to the Complaint or matters properly subject to judicial notice, or allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998 (9th Cir. 2010).

Defendants have relied solely on Plaintiffs' allegations and the procedural history of this matter that is subject to judicial notice and not reasonably subject to dispute.[1] Without relying on any improper facts, Defendants show that Plaintiffs have not satisfied the conditions set forth in Sections 8.6 and 8.7 of the APA.

1. Plaintiffs Did Not Satisfy Section 8.6.

Plaintiffs do not dispute that: (1) APA section 8.6 required, as a closing condition, that if the AG sought to impose "Additional Conditions" to his approval

[1] Plaintiffs did not object to Defendants' request for judicial notice of any document. Dkt. #49. Plaintiffs even requested judicial notice of other pleadings on the same basis as Defendants. Dkt. #48. In their response to Defendants' Request for Judicial Notice, Plaintiffs just objected to extent that Defendants were seeking to notice disputed factual matters, which is not the case. Dkt. #49.

of the sale to SGM, Verity was obligated to obtain a "final, non-appealable" Supplemental Sale Order (referred to in the Opposition as the Enforcement Order) providing for the sale to be free and clear of such Additional Conditions; or (2) as of Nov. 20, 2019 – the date Plaintiffs claimed that all conditions to closing had been satisfied and demanded that SGM close the sale – the time to appeal the Court's November 14 Supplemental Sale Order (14 days from entry) had not run. Because the Supplemental Sale Order was not "final and non-appealable" on November 20, 2019, Plaintiffs could not claim to have satisfied APA 8.6.

Moreover, this Court's Order of June 10, 2020 vacated the November 14 Supplemental Sale Order. Notwithstanding Plaintiffs' argument to the contrary, this Court's Order nullified any effect the Supplemental Sale Order may have had on section 8.6. *See In re Shoemaker*, No. 1:14-AP-01206-GM, 2019 WL 2774265, at *9 (B.A.P. 9th Cir. July 1, 2019) ("Once an order is vacated, it is as though it never existed."); *Animal Legal Def. Fund v. Veneman*, 490 F.3d 725, 729–30 (9th Cir. 2007) (holding that a vacatur removes all precedential value from a decision, rendering an opinion a legal nullity; and adopting the rule "that when a court vacates an order previously entered, the legal status is the same as if the order never existed."). Accordingly, Plaintiffs cannot have satisfied section 8.6. This conclusion requires no fact finding; the Court need only review the relevant orders.

This Court should reject Plaintiffs' effort to gainsay the record through a tortured reading of section 8.6 and a legal argument that this Court has rejected.

First, in the ultimate "bootstrap" argument, Plaintiffs argue that the requirement of a "final and non-appealable order" was never triggered, because the AG did not "impose" Additional Conditions when it approved the sale to SGM on September 25, 2019. (Opp. at 11-12.) Of course he did, as Plaintiffs state in the FAC. FAC, ¶ 72 ("On September 25, 2019, the Attorney General consented to the SGM Sale, subject to 2019 conditions that included additional conditions that were materially different than those SGM contractually agreed to in Schedule 8.6.") Had

the AG not imposed such Additional Conditions, there would have been no need for the Enforcement Motion referred to in FAC ¶ 73 or the Supplemental Sale Order.

Next, Plaintiffs contend this Court should ignore that the Supplemental Order was neither final nor non-appealable because they argue SGM either had no right to appeal, having agreed to cooperate with Plaintiffs' efforts to obtain a Supplemental Sale Order, or SGM waived its right to appeal by consenting to the bankruptcy court's jurisdiction to resolve certain APA disputes. This argument fails too.

SGM's duty to cooperate did not obligate SGM to accept any form of Supplemental Sale Order — especially one to which it had objected when it was presented to the bankruptcy court. That said, this Court already rejected Plaintiffs' arguments that SGM had no right of appeal. (Def. RJN, Exhs. D& E.). As discussed above, the order was even then vacated as a result of SGM's appeal.

Furthermore, Section 8.6 expressly provided for SGM to have a 21-business day evaluation period following entry of the Supplemental Sale Order for the purpose of determining whether the order adequately protected it from the AG's Additional Conditions. (See MTD at 12-13). Plaintiffs had no right to disregard this Evaluation Period. Accordingly, even if SGM did not have a right to appeal, the 14-day appeal period was not curtailed by SGM's duty to cooperate.

2. Plaintiffs Did Not Satisfy APA Section 8.7.

Plaintiffs do not dispute that: (1) the only notice or demand Plaintiffs ever gave SGM to close the sale was in its letter of November 20, 2019, demanding a closing on December 5, 2019; or that (2) as of November 20, Plaintiffs had no settlement agreement with DHCS as required by APA section 8.7. As explained in the Motion, the inquiry should end here. Simply put, Plaintiffs had not satisfied section 8.7 when they demanded SGM close the sale.

Plaintiffs offer three theories to excuse their non-compliance. As explained in Defendants' Motion, and again below, these theories are internally inconsistent and in conflict with Plaintiffs' own conduct and positions they have taken in court.

Plaintiffs' Theory 1: SGM was obligated to close on December 5, 2019 without the DHCS settlement agreement.

Plaintiffs argue that, as of November 20, 2019, Plaintiffs had obtained a combination of court orders that provided SGM with the same or better protection from DHCS' claims and collection action than the settlement agreement mandated in section 8.7. Opp. at 15. This theory fails for at least these three reasons:

- Plaintiffs' claim that the May 2, 2019 sale order provided for a sale free and clear of DHCS' recoupment rights is contradicted by (i) the bankruptcy court's express reservation in the May 2 order of all issues regarding the transfer of Plaintiffs' Medi-Cal provider agreements and (ii) the bankruptcy court's subsequent memorandum of decision of September 26, 2019 and order of October 11, 2019, both of which expressly reserved the issue of DHCS' recoupment rights (See MTD at 7-8).

- A court order, entered without DHCS' consent, could not substitute for a settlement agreement (See MTD at 14).

- The bankruptcy court's October 11, 2019 order, on which Verity erroneously relies (since it expressly reserved DHCS' recoupment rights), was on appeal by DHCS as of November 20 (and on December 5), and, therefore, SGM could not have been obligated to close on December 5 since that order was not final. (See MTD at 17).

Plaintiffs' Theory 2: SGM was obligated to close on December 9, 2019 because of a November 22, 2019 "oral agreement."

Plaintiffs argue that SGM was obligated to close on December 9, 2019 because, they contend, they had reached an "oral agreement" with DHCS by November 22, 2019. In other words, Defendants were obligated to close a transaction simply because Plaintiffs claim they had an unspecified "oral agreement" with a *government agency* relating to a *$70 million* liability. This implausible argument is further dispelled by the following:

- An oral agreement cannot satisfy section 8.7.

- Plaintiffs did not give a new notice to close based on the argument that they had entered into an oral agreement with DHCS on Nov. 22.
- Plaintiffs admitted at a November 26, 2019 court hearing that Plaintiffs just had a "settlement in principle" and were still "negotiating the terms of a written settlement agreement." (RJN Ex. S.)
- DHCS did not believe it had a binding agreement or that SGM was protected from liability because, on December 9, 2019, DHCS filed its opening brief on appeal from the October 11, 2019 order arguing: "Buyer SGM will be held jointly and severally liable for any debt owed by the Debtors to the Department" and "will be subject to Department's recoupment of any unpaid HQA Fees…." (RJN Ex. T at p. 469.)
- Plaintiffs expressly terminated the APA based on the APA's defaults that occurred by December 5, 2019 (not December 9 or after). (RJN Ex. P.)

Revealingly, in their Opposition, Plaintiffs ignore their own counsel's admissions at the November 26 hearing and DHCS' appeal.

Plaintiffs' Theory 3: Defendants breached on December 23, 2019.

Plaintiffs came up with a new theory for their FAC, namely, that the stipulation between DHCS and Verity, filed December 9, 2019, started a new 10-day period to close, which would have given SGM until Dec. 23 to close. This argument is contradicted by Plaintiffs' own conduct.

First, Plaintiffs admit they did not give SGM a new notice to close based on their newly-stated contention they had satisfied § 8.7 on December 9. Instead, on December 6, Plaintiffs filed an emergency motion requesting, *inter alia*, a finding that SGM had failed to close on December 5 and permission to "forfeit" SGM's $30MM deposit and terminate the APA as a result. (RJN Ex. R) After the bankruptcy court denied resolving this issue in the OSC, Plaintiffs then *terminated* the APA on December 17, well before expiration of this newly alleged 10- business day closing period. In their Termination statement, Plaintiffs expressly stated that they were terminating based on Defendants' alleged pre-December 5, 2019

breaches. (RJN Ex. P.) Plaintiffs stated: "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]. . . . As a result of each of the above material breach notices, the APA will terminate effective December 27, 2019." (*Id.*) Plaintiffs cannot both exercise an alleged right to terminate based on prior breaches and claim that the APA was still in operation. Plaintiffs do not address these statements in their Opposition. As explained above, no theory can possibly excuse Plaintiffs' failure to satisfy 8.7 before it noticed the close on November 20.

3. All Claims Fail Because of Failure to Satisfy Conditions.

Plaintiffs argue that Defendants did not address all breach allegations. Not so. Rather, Plaintiffs must show that they satisfied all conditions precedent as an element of their breach of contract claims (Counts 1, 3-5). *See Careau & Co. v. Security Pacific Bus. Credit, Inc.,* 222 Cal. App. 3d 1371, 1389 (1990) ("Where contractual liability depends upon the satisfaction or performance of one or more conditions precedent, the allegation of such satisfaction or performance is an essential part of the cause of action.").

Plaintiffs erroneously contend that Defendants did not address their claims about SGM's failure to cooperate. But Defendants addressed this issue in their discussion of § 8.6. As for Plaintiffs' theory that Defendants breached APA § 3.9 because Defendants allegedly did not have the funds to close, that fails as a result of Plaintiffs' failure to meet the conditions. Because Plaintiffs never satisfied the conditions, there was never a closing triggering section 3.9.

Plaintiffs' fraud claim also fails because satisfying these conditions is necessary to show damages resulting from the fraud. As explained below, Plaintiffs' fraud and tortious breach claims fail for additional reasons.

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

1. The Litigation Privilege Applies to the Alleged Fraud.

Plaintiffs do not dispute that the privilege applies to statements made in

connection with a bankruptcy proceeding. *E.g., In re Cedar Funding, Inc.,* 419 B.R. 807, 825 (B.A.P. 9th Cir. 2009) (a "bankruptcy proceeding is a judicial proceeding within the scope of California's litigation privilege."); *Sacramento Brewing Co. v. Desmond, Miller, & Desmond,* 75 Cal.App.4th 1082, 1086 (1999) (holding privilege applied to statement made in a bankruptcy motion). Nor do they or can they dispute the substantial breadth of this privilege and the instruction that any doubts should be resolved in favor of its application. *See Ramalingam v. Thompson*, 151 Cal. App .4th 491, 500 (2007); *see also Olsen v. Harbison,* 191 Cal.App.4th 325, 333 (2010) ("The breadth of the litigation privilege cannot be understated.") .[2]

Plaintiffs erroneously argue that Defendants are not protected by the litigation privilege because they are not parties to the bankruptcy. Because Plaintiffs made the same argument in their first opposition, Defendants refuted this argument in their Motion and previous reply. Once again, the litigation privilege is not limited to parties; it applies broadly to anyone connected with the proceedings. *Kolar v. Donahue, McIntosh & Hammerton*, 145 Cal.App.4th 1532, 1540 (2006); *see also Olsen*, 191 Cal .App. 4th at 334. Plaintiffs ignore *Olsen* in which the court rejected the argument that the defendant's representations were not privileged because he "was not a participant in the Klawitter litigation when he made the alleged representations." The court explained: "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*., 335.

Here, Plaintiffs allege Defendants made a fraudulent representation as part of

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[2] Strangely, Plaintiffs make the exact same false claim they made in their Opposition to Defendants' first motion – *i.e.,* that Defendants "fail to cite a single case applying the litigation privilege to a claim for promissory fraud context." (See Opp. at 20 and BK Dkt. 56 at 23). As Defendants explained in their previous reply, Defendants cited *Navarro v. IHOP Properties, Inc*., 134 Cal.App.4th 834 (2005), which relates to a claim for promissory fraud. *See* Dkt. 26 at 5.

an effort to purchase hospitals in a bankruptcy proceeding. Because that agreement even *expressly* required the approval of the bankruptcy court and the AG (*see* APA §§7.6, 8.2, 8.6), Defendants' participation in the proceedings was imminent. *Dove Audio, Inc. v. Rosenfeld, Meyer & Susman*, 47 Cal. App. 4th 777, 781(1996) (applying litigation privilege to proceedings with Attorney General and noting that "communications preliminary to the institution of an official proceeding come within the privilege of Civil Code section 47, subdivision (b)."). Indeed, Plaintiffs' allegations showing Defendants lack of intent (discussed below) specifically relate to what Defendants believed the AG would do in the proceeding. FAC, ¶59.

Plaintiffs also argue the litigation privilege does not apply because Defendants allegedly engaged in a tortious course of conduct. Wrong again. Plaintiffs' fraud claim is based only on SGM's representation in the APA that it would pay $610 million to close the transaction. (FAC, ¶115.) As explained above, this representation is privileged.

Plaintiffs also argue the litigation privilege does not apply because Defendants allegedly engaged in a tortious course of conduct. Wrong again. Plaintiffs' fraud claim is only based on SGM's representation in the APA that it would pay $610 million to close the transaction. (FAC, ¶115.) As explained above, this representation is privileged.

2. Plaintiffs' Allegations Negate Fraud.

As Plaintiffs note, courts must "accept as true Plaintiffs' factual allegations." (Opp. at 22.) However, when a plaintiff alleges facts that disprove her claim, "a plaintiff may plead herself out of court." *Weisbuch v. Cty. of Los Angeles,*119 F.3d 778, 783 (9th Cir. 1997) ("If pleadings establish facts compelling a decision one way, that is as good as if depositions and other expensively obtained evidence on summary judgment establishes the identical facts."). This is what happened here.

For fraud to be actionable, 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."); *see also City of Atascadero v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 68 Cal. App. 4th 445, 482 (1998) ("Fraud is an intentional tort … It is the element of intent which makes fraud actionable…."); *Richard P. v. Vista Del Mar Child Care Serv*., 106 Cal. App.3d 860, 865 (1980) ("predictions of future events are ordinarily considered nonactionable expressions of opinion.").

Here, as explained in the Motion, Plaintiffs' own allegations conclusively establish that Defendants did not intend to breach the APA when SGM agreed to it. In at least six places in their FAC, Plaintiffs allege that Defendants did not have fraudulent intent. Instead, Defendants allegedly believed Plaintiffs would not be able to 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…"); *see also id.* ¶59, 78. Defendants' alleged mistake in judgment does not constitute fraud.

Plaintiffs also mistakenly rely on their new allegation, which states: "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. Because Plaintiffs' prior and more specific allegations negate the fraud, insertion of this generic allegation does not change anything. Because Defendants did not have intent to breach the contract, Plaintiffs' fraud claim fails for this additional reason.

D. Plaintiffs' Claims for "Tortious Breach of Contract" Fail.

SGM has repeatedly presented Plaintiffs with binding Ninth Circuit authority unequivocally holding that their claims for "tortious breach of contract" or "tortious breach of the implied covenant of good faith and fair dealing" do not lie, where, as here, the parties deal at arm's length. *See* Dkt. No. 26; Dkt. No. 27; Dkt. No. 39;

BK Dkt. No. 40 at 21. Each time, Plaintiffs repeat the same erroneous refrain – that *Robinson Helicopter* allegedly established claims for "tortious breach of contract" and "tortious breach of the implied covenant" and that "numerous courts" have recognized the existence of such claims. *E.g.* BK Dkt. No. 56 at 28; Opp. at 23.

Once again, Plaintiffs have not cited a single reported case asserting claims for "tortious breach," let alone one in which such claims survive a motion to dismiss. Defendants noted as much in their prior Reply. *See* Dkt No. 39 at fn. 7. As Defendants explained previously, Plaintiffs' numerous string-cited cases stand only for the unremarkable principle that a plaintiff may allege various tort claims (*e.g.* negligence, conversion, etc.) when a contracting defendant has also breached a duty arising independent of the contract, without such claims being barred by the economic loss rule. *E.g., Century of Progress Prods. v. Vivendi S.A.,* 2018 WL 4191340, at *9 (C.D. Cal. Aug. 28, 2018) ("Plaintiffs have alleged Defendants' breach of a duty not arising from contract, and resulting harm distinct from breach") (Opp. at fn. 5); *Vestis, LLC v. Caramel Sales, Ltd ,.* 2019 WL 3312212, at *9 (C.D. Cal. Apr. 30, 2019) (holding that the Plaintiff could seek tort damages for conversion despite the existence of a contract) (Opp. at fn. 6).[3] Ignoring these

[3] *Najor v. Wells Fargo Bank, N.A*. 2019 WL 1858502, at *4-5 (S.D. Cal. Apr. 25, 2019) (no "tortious breach of the implied covenant claim." Plaintiff pled a *fraud* claim and, separately, a standard claim for breach of the implied covenant); *Dairy v. Harry Shelton Livestock*, 2019 WL 631493, at *10 (N.D. Cal. Feb. 14, 2019) (Holding only that Plaintiff's *negligence* and *fraud* claims should not be dismissed under the economic loss rule.); *Expedited Packages, LLC v. Beavex Inc.*, 2015 WL 13357436, at *3 (C.D. Cal. Sept. 10, 2015) (conversion claim not barred) (Opp. at fn. 6) *Kanter v. Playbill, Inc*., 2017 WL 10591601, at *7 (C.D. Cal. Aug. 31, 2017) (holding only that the economic loss rule did not bar plaintiff's fraud claim); *Bullard v. Wastequip, Inc*., 2014 WL 10987394, at *8 (C.D. Cal. Sept. 11, 2014) (dismissing claim for promissory fraud); *Foley v. Aintabi*, 2013 WL 12130015, at *6 (C.D. Cal. Nov. 6, 2013) (fraud claims not barred by the economic loss rule); *Fortune Mfg. Co. v. Zurn Indus., LLC*, 2011 WL 13218043, at *3 (C.D. Cal. Aug. 31, 2011) (claim for intentional interference with contractual relations); *Unique Functional Prod., Inc. v. JCA Corp.*, 2011 WL 13355975, at *6 (S.D. Cal. May 4, 2011) (fraud claim not barred by economic loss rule); *Gentec Enterprises Inc v. Transistor Devices Inc*, 2011 WL 13217566, at *3 (C.D. Cal. Jan. 31, 2011) (same); *Velocity Staffing Corp., Inc. v. Resolve Staffing, Inc.*, 2008 WL 11342746, at *3 (C.D. Cal. June 16, 2008) (same)*; Rejects Skate Magazine, Inc. v. Acutrack, Inc*., 2006 WL 2458759, at *5 (N.D. Cal. Aug. 22,

authorities, Plaintiffs restate the same false claim again.

Knowing their claims are faulty, Plaintiffs attempt to mislead this Court in two new ways. First, Plaintiffs claim that "Defendants' mischaracterization of *Robinson Helicopter* as an 'economic loss rule' case is simply untenable." Opp. at 23 fn. 5. *Robinson Helicopter's* holding squarely contradicts this assertion: "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." 34 Cal. 4th 979, 991 (2004) (emphasis added). Plaintiffs willfully misstate *Robinson Helicopter's* holding because it is fatal to their claims.

Second, Plaintiffs argue (again) that "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and in its enforcement." Opp. at 246-23 (*citing Vegas Land & Dev. Co., Inc. v. Bank of Am., N.A.,* 2018 WL 6991161, *6 (C.D. Cal. Oct. 15, 2018)). That is true, but the breach of such a duty in the non-insurance context gives rise to a claim for breach of the implied covenant of good faith and fair dealing, not an independent tort claim. *Las Vegas Land & Development Co., Inc.* did not include any such claim.

Plaintiffs' claims must be dismissed.

III. CONCLUSION

Because Plaintiffs have not and cannot allege a viable claim, Defendants request that the Court grant with prejudice their Motion to Dismiss.

2006)(discussing the personal injury or property damage exception to the economic loss rule); *StreamCast Networks, Inc. v. IBIS LLC*, 2006 WL 5720345, at *10 (C.D. Cal. May 2, 2006) (fraud claim); *El Dorado Irrigation Dist. v. Traylor Bros*., 2006 WL 306914, at *5 (E.D. Cal. Feb. 7, 2006) (personal injury not required for fraud); *Putnam v. Putnam Lovell Grp. NBF Sec., Inc*., a Delaware corporation, 2005 WL 2463951, at *9 (N.D. Cal. Oct. 5, 2005) (fraudulent inducement). Plaintiffs' only case even discussing a claim for tortious breach of the implied covenant is *Bea v. Sw. Airlines Co*., No. 2005 WL 646074, at *4 (N.D. Cal. Mar. 17, 2005), a fifteen year old, unpublished decision that misapplied the economic loss rule, was wrongly decided, and has never been cited for that proposition.

Dated: July 27, 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

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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

☐ 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 **DECLARATION OF JOEL R. MEYER IN SUPPORT OF DEFENDANTS' REPLY IN SUPPORT OF 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

DECLARATION

I, Joel R. Meyer, hereby declare

1. I am a partner with Barnes & Thornburg, LLP, counsel of record for 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") in the above-captioned case. I am admitted to practice before all courts of the state of California and the United States District Court for the Central District of California. I make this Declaration based on my personal knowledge of the facts set forth herein. If called as a witness, I could and would competently testify to the facts set forth below, and I know each to be true based upon my own personal knowledge.

2. Defendants filed a motion to dismiss Plaintiffs' original complaint and an Anti-SLAPP motion in the above-captioned case on February 19, 2020. *See* Dt. No. 40 (Case No. 2:20-ap-01001). After Defendants' original motions were fully briefed, Plaintiffs used their amendment as a matter of right and filed a First Amended Complaint on March 11, 2020. *See* Dkt. No. 29.

3. Although Plaintiffs were well informed regarding Defendants' arguments given the extensive briefing that had already taken place, after Plaintiffs filed their First Amended Complaint, I participated in two meet and confer conversations with Plaintiffs' counsel in March 2020 in relation to Defendants' planned motion to dismiss Plaintiffs' First Amended Complaint. Given that Defendants were arguing that Plaintiffs' claims were not viable as a matter of law (as opposed to arguing that Plaintiffs just failed to plead sufficient facts), it was not surprising that the parties were not able to reach an agreement. Because SGM was asking the Court to resolve many of the same substantive issues in its pending appeal, Defendants also suggested that the parties stay the action pending the resolution of the appeal.

4. As explained in the reply, in the stipulations the parties filed, the

parties specifically acknowledged that Defendants had engaged in the meet and confer regarding the motion to dismiss. In their Opposition, Plaintiffs complain that Defendants did not seek to meet and confer again after this Court ruled on the Appeals. However, the parties' agreement to meet and confer post-appeal was premised on the expectation that the Court would reach the substantive issues in the Appeals and thus may cause a party to reconsider their positions. Instead, the Court ruled that the Appeals were constitutionally moot. Given that the parties had already met and conferred on the motion to dismiss, Defendants proceeded with their motion. Plaintiffs' counsel also never contacted Defendants to request an opportunity to amend their complaint in light of the Court's ruling.

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

Dated: July 27, 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