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UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re

VERITY HEALTH SYSTEM OF CALIFORNIA, INC., et al.,

Debtors and Debtors in Possession.

☐ Affects All Debtors
☐ Affects Verity Health System of California, Inc.
☐ Affects O'Connor Hospital
☐ Affects Saint Louise Regional Hospital
☒ Affects St. Francis Medical Center
☒ Affects St. Vincent Medical Center
☐ Affects Seton Medical Center
☐ Affects O'Connor Hospital Foundation
☐ Affects Saint Louise Regional Hospital Foundation
☐ Affects St. Francis Medical Center of Lynwood Foundation
☐ Affects St. Vincent Foundation
☐ Affects St. Vincent Dialysis Center, Inc.
☐ Affects Seton Medical Center Foundation
☐ Affects Verity Business Services
☐ 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.

Lead Case No. 2:18-bk-20151-ER

Jointly administered with:
Case No. 2:18-bk-20162-ER;
Case No. 2:18-bk-20163-ER;
Case No. 2:18-bk-20164-ER;
Case No. 2:18-bk-20165-ER;
Case No. 2:18-bk-20167-ER;
Case No. 2:18-bk-20168-ER;
Case No. 2:18-bk-20169-ER;
Case No. 2:18-bk-20171-ER;
Case No. 2:18-bk-20172-ER;
Case No. 2:18-bk-20173-ER;
Case No. 2:18-bk-20175-ER;
Case No. 2:18-bk-20176-ER;
Case No. 2:18-bk-20178-ER;
Case No. 2:18-bk-20179-ER;
Case No. 2:18-bk-20180-ER;
Case No. 2:18-bk-20181-ER

Chapter 11 Cases

Adv. Proc. No. 2:19-ap-01002-ER

MOTION FOR ENTRY OF ORDER DISMISSING COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR ENTRY OF ORDER STAYING TRIAL OF ADVERSARY PROCEEDING, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: April 2, 2019
Time: 10:00 A.M.
Judge: Hon. Ernest M. Robles
Courtroom: 1568

1820151190218000000000009

ST. VINCENT MEDICAL CENTER, a California nonprofit public benefit corporation and ST. FRANCIS MEDICAL CENTER, a California nonprofit public benefit corporation,

Plaintiffs,

v.

LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY DBA L.A. CARE HEALTH PLAN, an independent local public agency,

Defendant.

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MOTION FOR ENTRY OF ORDER DISMISSING COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR ENTRY OF ORDER STAYING TRIAL OF ADVERSARY PROCEEDING

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("F.R.Civ.P."), which is made applicable to this Adversary Proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure ("F.R.Bankr.Proc."), Defendant Local Initiative Health Authority for Los Angeles County operating as L.A. Care Health Plan ("L.A. Care") respectfully requests that the Court enter an order dismissing the Complaint filed by Plaintiffs St. Vincent Medical Center ("SVMC") and St. Francis Medical Center ("SFMC" and, together with SVMC, the "Plaintiffs"), in its entirety, with prejudice, for failure to state any claims upon which relief can be granted. *In the alternative*, pursuant to Section 3 of the Federal Arbitration Act, as amended ("FAA"), 9 U.S.C. §3, L.A. Care respectfully requests that the Court stay the trial of this action until an arbitration has been conducted and concluded in accordance with the terms of the respective agreements between L.A. Care and SVMC and between L.A. Care and SFMC. *Finally, pursuant to 28 U.S.C. § 157(c)(2) and F.R.Bankr.Proc. 7012(b), L.A. Care hereby consents to the entry of final orders or judgment by the bankruptcy court.*

This Motion is made on the following grounds:

1. **First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Claims for Relief**: Each of these purported Claims for Relief fails to state a claim because each is a claim for monetary damages that is subject to the provisions of the Government Claims Act, California Government Code §§ 810, et seq., and the Complaint does not allege that Plaintiffs complied with the mandatory pre-complaint claim presentation requirements of the Government Claims Act.

2. **First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Claims for Relief**: Each of these purported Claims for Relief fails to state a claim because each such claim is subject to mandatory arbitration under the contract between L.A. Care and SVMC and under the contract between L.A. Care and SFMC.

3. **First and Fifth Claim for Relief**: The purported First and Fifth Claims for Relief for breach of contract each fail to state a claim because the Complaint does not allege sufficient facts regarding the necessary element of a breach by L.A. Care or the necessary element of Plaintiffs' performance under either of the alleged contracts.

4. **Second and Sixth Claim for Relief**: The purported Second and Sixth Claims for Relief for turnover each fail to state a claim because the Complaint does not allege sufficient facts demonstrating that L.A. Care has any property of the estate in its possession, custody, or control.

5. **Third and Seventh Claim for Relief**: The purported Third and Seventh Claims for Relief for unjust enrichment each fail to state a claim because the Complaint does not allege sufficient facts demonstrating that L.A. Care has improperly retained a benefit at Plaintiffs' expense, because the existence of an enforceable contract between L.A. Care and SVMC and an enforceable contract between L.A. Care and SFMC bars the claims as a matter of law, and because L.A. Care is a public entity and therefore immune from claims based on restitution-based claims.

6. **Fourth and Eighth Claim for Relief**: The purported Fourth and Eighth Claims for Relief for violation of the stay each fail to state a claim because the Complaint does not allege sufficient facts demonstrating that L.A. Care violated the stay.

7. **Ninth Claim of Relief**: The purported Ninth Claim of Relief for injunctive relief fails to state a claim because injunctive relief and punitive damages are remedies and not stand-alone causes of action, because Plaintiffs cannot recover punitive damages from L.A. Care as a matter of law, and because the purported claim for punitive damages is nonjusticiable. .

8. **Motion to Stay**: Should the Court deny L.A. Care's Motion to Dismiss in whole or in part, the Court should alternatively stay the adversarial proceeding. Each of the purported Claims for Relief are subject to arbitration, and this Court must stay the adversarial proceeding pursuant to the Federal Arbitration Act, 9 U.S. Code § 3.

In support of this Motion, L.A. Care relies upon the filed pleadings, the

accompanying Memorandum of Points and Authorities, its anticipated Reply Brief in support of this Motion, any facts of which the Court may later take judicial notice upon proper application by one or both of the Parties, applicable legal authority, and the arguments of counsel in support of this Motion.

DATED: February 15, 2019

HANSON BRIDGETT LLP

By: */s/ Neal L. Wolf*
NEAL L. WOLF
ANTHONY J. DUTRA
Attorneys for Local Initiative Health Authority for Los Angeles County operating as L.A. Care Health Plan

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

For three fundamental reasons, the Complaint ("Complaint") filed by Plaintiffs St. Vincent Medical Center and St. Francis Medical Center (together, the "Plaintiffs") should be dismissed.

Reason Number One. The agreements between Defendant Local Initiative Health Authority for Los Angeles County, operating as L.A. Care Health Plan ("L.A. Care") and Plaintiffs, which are attached as exhibits of the Complaint, contain clear and unambiguous arbitration clauses that apply to Plaintiffs' various claims. Plaintiffs must arbitrate its claims against L.A. Care and cannot prosecute them in a court of law. On this ground alone, Plaintiffs claims must be dismissed.

Reason Number Two. Because L.A. Care is a California "local governmental agency," Plaintiffs were required to satisfy the claims presentation requirements of the California Government Claims Act before initiating their required arbitration proceeding against L.A. Care, or even a lawsuit. The Complaint is utterly devoid of factual allegations demonstrating that Plaintiffs complied with the Government Claims Act. Plaintiffs' claims must be dismissed on this separate and independent basis.

Reason Number Three. In Plaintiffs' rush to the wrong forum, they filed a bare-bones Complaint that fails to plead sufficient facts in support of any of their purported Claims for Relief. Plaintiffs' First and Fifth Claims for Relief for breach of contract fail to allege facts showing that L.A. Care breached the agreements or that Plaintiffs performed under them. Plaintiffs' Second and Sixth Claims for Relief fail to allege that L.A. Care has any property of the estate, a necessary element of Plaintiffs' turnover claims. Plaintiffs' Third and Seventh Claims for Relief fail to allege either of the two essential elements of the claim – specifically, that L.A. Care received any benefit at Plaintiffs' expense and that L.A. Care wrongly retained any benefit it might have received from Plaintiffs. It also fails because Plaintiffs cannot assert a so-called unjust enrichment claim against L.A. Care both because, as a public entity, L.A. Care cannot be liable for unjust enrichment and

because an unjust enrichment claim is not available when the parties have entered an enforceable contract covering the issue. Plaintiffs' Fourth and Eighth Claims for Relief, asserting that L.A. Care violated the automatic stay, fail because the exercise of a right of recoupment (in this case, an express, contractual right of recoupment) does not and cannot violate the automatic stay. Plaintiffs' final claim – the Ninth Claim for Relief seeking injunctive relief – is not even a cause of action.

Any one of these three problems is alone sufficient to warrant dismissal of the Complaint. The Complaint should therefore be dismissed in its entirety. However, if this Court were to find that any of Plaintiffs' claims were somehow viable, this Court should stay the entire proceeding as required by the Federal Arbitration Act.

II. FACTUAL ALLEGATIONS

A. The Parties and the Contracts.

Plaintiffs are separate, but affiliated, nonprofit corporations providing hospital and ancillary medical services in Los Angeles County. (Complaint ¶¶ 5, 6.)

L.A. Care is an independent local public agency that provides a prepaid comprehensive health plan and is licensed to conduct business in Los Angeles County under the Knox-Keene Health Care Services Plan Act of 1975, as amended. L.A. Care provides health services to its members under contracts with other health plans, hospitals, physicians, and other health care providers. (*Id.* ¶ 7.) L.A. Care's mission is to provide access to quality health care for Los Angeles County's vulnerable and low income communities and residents and to support the safety net required to achieve that purpose.[1]

[1] L.A. Care is a "commission" within the meaning of Welfare and Institutions Code § 14087.96(c) and an independent separate public agency. L.A. Care is authorized by the State of California and established by the County of Los Angeles to provide health coverage to low-income Los Angeles County residents. It is the nation's largest publicly operated health plan, serving more than two million members. Los Angeles County Ord. 94-0100 § 1, 1994, codified in L.A. County Ordinance No. 3.79.040 et seq., pursuant to Senate Bill 2092 (1994) (codified in California Welfare and Institutions Code sections 14087.96 through 14087.9725, 14087.38).

Plaintiffs entered into separate written contracts with L.A. Care, which are attached as exhibits A and C to the Complaint, whereby Plaintiffs agreed to provide medical services to L.A. Care's members, and L.A. Care agreed to reimburse Plaintiffs for "covered medical services [they] rendered to L.A. Care's members at agreed upon rates." (*Id.* ¶¶ 13, 40.)

Under the terms of those agreements, Plaintiffs were required to obtain L.A. Care's authorization prior to providing health services to L.A. Care's members. (*Id.* at Exh. A ¶ 1.5; *id.* at Exh. C ¶ 1.19.) If Plaintiffs obtained the necessary prior authorization and then actually provided the members with covered medical services, Plaintiffs were required to submit "Clean Claims" for those services using the required claim transmittal process to obtain reimbursement from L.A. Care. (*Id.* at Exh. A ¶¶ 1.3(b), 2.2, 2.7; *id.* at Exh. C ¶¶ 1.24, 3.2.) If Plaintiffs obtained prior authorization and properly submitted a Clean Claim for covered care, L.A. Care then had thirty business days to reimburse Plaintiffs at the negotiated rates. (*Id.* at Exh. A ¶¶ 1.4, 2.7; *id.* at Exh. C ¶ 3.2.) Nonetheless, L.A. Care was permitted to deny payment for a claim if, for example, Plaintiffs submitted the claim more than six months after the date the medical services were rendered. (*Id.* at Exh. A ¶¶ 2.2, 2.7; *id.* at Exh. C ¶ 3.2.) L.A. Care was also permitted to pay less than the agreed upon reimbursement rate – or even nothing at all – if another party (*e.g.,* an insurance company) had primary responsibility for paying for the medical services. (*Id.* at Exh. A ¶ 2.9; *id.* at Exh. C ¶ 3.8.) The contracts also provide L.A. Care with an express right to recoup overpayments from "any future payments." (Complaint at Exh. A ¶ 2.6; *id.* at Exh. C ¶ 3.6.)

Because the parties anticipated they might disagree about whether a particular claim Plaintiffs submitted was a Clean Claim; whether the claim was properly transmitted; whether the services rendered were covered services; how much, if anything, L.A. Care was required to reimburse Plaintiffs for a particular claim; or how much, if anything, L.A. Care was permitted to recoup from future payments, the parties agreed to an administrative claims appeal process. (*Id.* at Exh. A ¶ 7.3(a); *id.* at Exh. C ¶ 6.3(a).) If

the parties were unable to resolve a particular dispute after exhausting the administrative claim process, the sole remedy was arbitration. (*Id.* at Exh. A ¶ 7.3(b); *id.* at Exh. C ¶ 6.3(c).) The contracts contained identical arbitration clauses calling for, *inter alia*, binding arbitration in Los Angeles County by a single arbitrator, under the rules of either the American Arbitration Association or Judicial Arbitration and Mediation Services, Inc., and discovery in accordance with the California Code of Civil Procedure Section 1283.05. (*Id.*) Moreover, these arbitration clauses explicitly applied to disputes arising from L.A. Care's recoupment of overpayments from future payments due to the Plaintiffs. (*Id.* at Exh. A ¶ 2.6; *id.* at Exh. C ¶ 3.6.) In their entirety, the subject arbitration clauses provided as follows:

> (b) Arbitration. Except as specifically provided for elsewhere in the Agreement, ***all claims and controversies arising out of or in connection with this Agreement shall be subject to binding arbitration*** in Los Angeles County by a single arbitrator in accordance with the commercial arbitration rules of the American Arbitration Association ("AAA") or the existing Rules of Practice and Procedures of the Judicial Arbitration and Mediation Services, Inc. ("JAMS"), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The party filing the arbitration shall have the right to select either *AAA* or JAMS. The parties shall be entitled to discovery in accordance with the provisions of the California Code of Civil Procedure Section 1283.05. The parties agree that the arbitrator shall not have the right to award punitive damages. Neither party shall initiate any action after the time that such cause of action would have been barred by the applicable statute of limitation.

(Emphasis and italics added.)

B. Despite Agreeing to Mandatory Arbitration, Plaintiffs Wrongfully Initiated an Adversary Proceeding in the Bankruptcy Court.

Believing that L.A. Care failed fully to reimburse Plaintiffs for certain medical services, Plaintiffs initiated this adversary proceeding in direct violation of their agreement to arbitrate all disputes arising under their respective agreements with L.A. Care. (*Id.* at Exh. A ¶ 7.3(b); *id.* at Exh. C ¶ 6.3(c).) Significantly also, Plaintiffs do not allege that they exhausted the administrative appeals process. (*See generally id.*) Just as significantly, Plaintiffs do not allege that they complied with the Government Claims Act's mandatory

pre-litigation requirements. (*See generally id.*)

III. LEGAL STANDARD

To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter to state a facially plausible claim to relief." *Shroyer v. New Cingular Wireless Services, Inc*., 622 F.3d 1035, 1041 (9th Cir. 2010). Although allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party, the court need not accept conclusory allegations, unreasonable inferences, or allegations that contradict matters properly subject to judicial notice or documents submitted with the pleadings by exhibit. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

Additionally, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Papasan v. Allain*, 478 U.S. 265, 286 (1986) ("we are not bound to accept as true a legal conclusion couched as a factual allegation"). Thus, "formulaic recitation of a cause of action's elements" is not sufficient to defeat a motion to dismiss. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

IV. LEGAL ARGUMENT

A. The First through Eighth Claims for Relief Must Be Dismissed Because Plaintiffs Have Not Complied with the Government Claims Act.

The California Government Claims Act dictates if, how, and when a state or local government agency may be sued for damages. Cal. Gov't Code §§ 810, *et seq.* The Government Claims Act applies to any claim for damages – even a claim grounded in contract. *Baines Pickwick Ltd. v. City of Los Angeles*, 72 Cal. App. 4th 298 (1999); *Alliance Fin. v. City & County of San Francisco*, 64 Cal. App. 4th 635 (1998). Under the Government Claims Act, an aggrieved party must formally present a written claim complying with the Act's claims presentation requirements to a public entity that has allegedly harmed the party. Cal. Gov't Code §§ 905, 910, 945.4. The Government Claims Act dictates the specific requirements for both the content of the written claim and

for the presentation of that written claim. *Id.* §§ 910, 915.

Under the Government Claims Act, a "claim" ("Government Claim") has a very specific meaning. *A Government Claim under the Government Claims Act must not be confused with a claim in the healthcare context, like a "Clean Claim" (discussed above) or the medical claims Plaintiffs refer to in the Complaint as "Fee for Service Claims*," *which are merely a request for payment for medical services submitted by a provider to a payer*.

A Government Claim must include the following essential elements:

1. The name and address of the claimant and the person to whom notices are to be sent;

2. A statement of the "date, place, and other circumstances of the occurrence or transaction";

3. A description of the indebtedness, obligation, injury, damage, or loss incurred, as far as they are known when the claim is presented;

4. The name and public employee who caused the injury, if known; and

5. The amount claimed, if less than $10,000, or if more than $10,000, no dollar amount is to be included, but the claim must state whether the claim is to be a limited civil case. *See* Gov. Code § 910.

Government Claims – other than those relating to causes of action for death, injury to person, injury to personal property, and injury to growing crops — must be filed within one year after the accrual of the cause of action. Gov. Code § 911.3. The statutory time limits within which a Government Claim must be presented to the public entity are mandatory. *See*, *e.g., Wood v. Riverside Gen. Hosp.,* 25 Cal. App. 4th 1113, 1119 (1994) (timely filing of Government Claim is essential element of cause of action). That the public entity knows about the claimant's injury and the surrounding circumstances does *not* excuse timely compliance. *See Connelly v. County of Fresno*, 146 Cal. App. 4th 29, 41 n.4 (2006).

A Government Claim is presented either by delivering the document to the clerk, secretary, or auditor of the public entity, or mailing it to one of these people or to the

entity's governing body at its principal office. Gov. Code § 915(a).

Once an aggrieved party has properly presented a Government Claim, the governmental agency has at least 45 days to respond to that claim. *Id.* § 912.4. An aggrieved party cannot initiate any legal action, whether by lawsuit or in arbitration, against a governmental agency until it has presented a claim satisfying the requirements of the Government Claims Act and the government agency has either responded to that claim or the period for the agency to respond has passed without a response. *Id.* § 945.4. Compliance with the Government Claims Act is an element of any cause of action for damages against a government agency, and failure to plead specific facts demonstrating compliance with the Government Claims Act warrants dismissal of the plaintiff's claims. *Easley v. County of El Dorado Probation Dept.*, 478 Fed.Appx. 447, 447-48 (9th Cir. 2012); *State of California v. Superior Court*, 32 Cal.4th 1234, 1243 (2004).

Plaintiffs allege that L.A. Care "is an independent local public agency" that was "created by the Board of Supervisors of Los Angeles County." (Complaint ¶ 7; *id.* at Exh. C ¶ 2.2.) Plaintiffs were therefore required to comply with the Government Claims Act before initiating this lawsuit. Cal. Gov't Code § 945.4. The Complaint does not allege that Plaintiffs complied with the Government Claims Act, and thus, the First through Eighth Claims for Relief – all of which are claims for monetary damages – must be dismissed. *Easley*, 478 Fed.Appx. at 447-48; *California*, 32 Cal.4th at 1243.

A Government Claim must "assert the existence of a right to damages and an intention to pursue that right." *Alliance*, 64 Cal. App. 4th at 646 ("An invoice cannot be the subject of a suit until it is not paid."). Thus, none of the alleged "Fee for Service Claims" are "claims" under the Government Claims Act because a right to damages would not accrue on those "Fee for Service Claims" until (1) the 30-day payment period passed without the "Fee for Service Claim" being paid; and (2) L.A. Care's administrative appeals process had been exhausted. (Complaint ¶¶ 14, 41; *id.* at Exh. A ¶ 7.3(a); *id.* at Exh. C ¶ 6.3(a).) The Complaint does not allege that either of these conditions was

satisfied.

The closest the Complaint comes to alleging the presentation of a Government Claim are the "demands" that L.A. Care pay the unpaid "Fee for Service Claims." (Complaint ¶¶ 18, 45.) These allegations are insufficient because the Complaint fails to allege any facts demonstrating that the contents of these purported demands met the statutory definition of a Government Claim and fails to allege any facts demonstrating compliance with the Government Claims Act's claim presentation requirements. Cal. Gov't Code §§ 910, 915; *Alliance*, 64 Cal. App. 4th at 646. Nor does the Complaint allege that L.A. Care's board responded to the claims or that the 45 day period would have elapsed had a claim actually been presented. Indeed, it would be impossible for Plaintiffs to allege compliance with these aspects of the Government Claims Act because the earliest Plaintiffs could have presented a statutory claim was *after the date they filed their Complaint*.[2]

In addition to seeking damages for unpaid "Fee for Service Claims," the Complaint seeks unexplained damages above and beyond the amount of the purportedly unpaid "Fee for Service Claims" (Complaint ¶¶ 19, 46), seeks damages for unauthorized setoffs L.A. Care purportedly made (*id.* ¶¶ 26, 31, 34, 53, 58, 61), and seeks damages for the amount L.A. Care was purportedly unjustly enriched (*id.* ¶¶ 31, 58). The Complaint does not even attempt to allege compliance with the Government Claims Act for these alleged phantom upcharges, allegedly wrongful setoffs, and purported unjust enrichment. At bottom, the Complaint fails to allege compliance with the Government Claims Act for any of the damages sought in the Complaint, and this Court should therefore dismiss the First

[2] L.A. Care has thirty *business* days to pay any "Fee for Service Claim." (Complaint ¶¶ 14, 41.) The Complaint alleges "Fee for Service Claims" transmitted through December 3, 2018. (Complaint ¶¶ 15, 42.) Even if holidays were ignored, thirty business days from December 3, 2018 would be January 14, 2019. No statutory claim could be presented on the December 3, 2018 "Fee for Service Claims" until they went unpaid, which would have occurred no sooner than January 15, 2019 – nearly two weeks after Plaintiffs filed the Complaint. *Alliance*, 64 Cal. App. 4th at 646 ("An invoice cannot be the subject of a suit until it is not paid.").

through Eighth Claims for Relief. *Easley*, 478 Fed.Appx. at 447-48; *California*, 32 Cal.4th at 1243.

B. This Court Should Dismiss the First through Ninth Claims for Relief Because They Must Be Arbitrated

Plaintiffs contractually agreed that, in the event L.A. Care's administrative appeals process failed to resolve a dispute between Plaintiffs and L.A. Care, Plaintiffs' sole legal remedy was to arbitrate the dispute. (Complaint at Exh. A ¶ 7.3; *id.* at Exh. C ¶ 6.3.)

Bankruptcy Courts must enforce arbitration clauses and compel arbitration unless, based on the claims and issues presented in the case, "there is an inherent conflict between arbitration and the underlying purposes of the Bankruptcy Code." *In re Thorpe Insulation Co*., 671 F.3d 1011, 1020 (9th Cir. 2012). A debtor's breach of contract claims – whether framed as a breach of contract or couched as "turnover" proceedings – are "noncore" claims, and "a bankruptcy court must enforce an agreement to arbitrate a claim that is noncore." *In re Gurga*, 176 B.R. 196, 197, 199 (B.A.P. 9th Cir. 1994). Here, despite Plaintiffs' allegations to the contrary, Plaintiffs' claims are "noncore" claims that must be arbitrated. Indeed, they are exactly like the debtor's claims in *Gurga* that were held to be subject to mandatory arbitration. In *Gurga*, as in the case at bar, the plaintiff sought to disguise disputed breach of contract claims as core, turnover proceedings that were not subject to arbitration. In enforcing the parties' arbitration agreement, the Ninth Circuit BAP rejected this transparent ruse:

> Despite Source's attempts to frame the issues herein as core, we find that the claims are noncore. It is undisputed that the underlying action is a breach of contract action. The adversary proceeding filed by Source entitled "Complaint for turnover of property, accounting, breach of contract, conversion, and breach of fiduciary duty," includes only one potential core issue – turnover of property pursuant to 11 U.S.C. § 542(b). However, turnover proceedings involve return of *undisputed* funds. … Here, the amounts, if any, owed to Source by MCI are in dispute and this dispute rests on breach of contract issues. … Breach of contract actions are noncore claims. See 28 U.S.C. § 157.

(*Id*. at 199). The BAP went on to hold:

> Here, Source agreed to mandatory, exclusive arbitration of any claims arising from its contract with MCI. There is nothing either explicit or implicit in the Bankruptcy Code excusing Source from arbitration of these noncore claims.

(*Id*. at 200).

If a plaintiff's claims are subject to arbitration, a Court need not merely issue a stay of the proceedings under Section 3 of the Federal Arbitration Act, but may instead dismiss the claims in their entirety. *Thinket Ink Information Resources, Inc. v. Sun Microsystems, Inc.*, 368 F.3d 1053, 1061 (2004) (affirming dismissal of arbitrable claims under Fed. R. Civ. P. 12(b)(6)). Each of Plaintiffs' purported Claims for Relief here are subject to mandatory arbitration. This Court should therefore dismiss the Complaint in its entirety without leave to amend. *Id.*

C. Each of the Purported Claims for Relief Independently Fails Because Each Such Claim Fails to Allege Facts Sufficient to State a Claim

All of the purported Claims for Relief fail as a matter of law because they are subject to mandatory arbitration and because the Complaint fails to allege that Plaintiffs complied with the claims presentation requirements of the Government Claims Act. Each of the purported Claims for Relief also independently fails because it fails to allege facts sufficient to state a claim.

1. The First and Fifth Claims for Relief fail to state a claim for breach of contract.

To state a claim for breach of contract, a complaint must plead facts demonstrating: (1) that the plaintiff and defendant entered into a valid contract, (2) that the defendant breached the contract, (3) that the plaintiff fully performed his contractual obligations or that his performance was excused, and (4) the defendant's breach caused harm to the plaintiff. *San Mateo Union High Sch. Dist. v. City of San Mateo*, 213 Cal. App. 4th 418, 439 (2013). The Complaint fails to allege facts establishing the second and third of these elements. The First and Fifth Claims for Relief should therefore be dismissed.

The Complaint alleges that L.A. Care agreed to pay for "covered medical services," that Plaintiffs submitted "claims for payment," and that L.A. Care purportedly breached the agreements "by failing and refusing to pay" Plaintiffs for the services they rendered L.A. Care members. (Complaint ¶¶ 13-16, 40-43.) Completely missing from the Complaint is any allegation that the services for which Plaintiffs now seek reimbursement were "covered medical services."

Worse still, there are no allegations concerning whether the Plaintiffs sought prior authorization for medical services as required under the agreements, whether the claims were "Clean Claims" as required under the agreements, whether the claims were transmitted in the required manner specified in the agreements, whether L.A. Care had primary responsibility for the claims under the required coordination of benefits rules, whether the Plaintiffs submitted the claims within six months of the date the subject services were provided, whether 30 business days has elapsed since Plaintiffs transmitted the claims,[3] or whether Plaintiffs have exhausted the required administrative appeal process. (Complaint at Exh. A, ¶¶ 1.3(b), 1.4, 1.5, 2.2, 2.7, 2.9, 7.3(a); *id.* ¶¶ 1.19, 1.24, 3.2, 3.8, 6.3(a).) Without factual allegations regarding each of these issues, it is impossible to determine whether L.A. Care has breached its agreements with Plaintiffs or whether Plaintiffs actually performed their contractual obligations. Plaintiffs conclusory allegations that they "performed all terms and conditions required" under the Plaintiffs' agreements with L.A. Care are insufficient as a matter of law. *Twombly*, 550 U.S. at 555 (a "formulaic recitation of a cause of action's elements" is not sufficient to defeat a motion to dismiss). More to the point, Plaintiffs' boilerplate allegations should be rejected because, if Plaintiffs actually performed under the agreements, this case would be in arbitration instead of before this Court. (Complaint at Exh. A, ¶ 7.3(b); *id.* ¶ 6.3(b).)

[3] As discussed above, Plaintiffs filed the Complaint less than thirty business days after Plaintiffs submitted at least some of the alleged "Fees for Service Claims" to L.A. Care. (*See Supra* fn. 2.) Plaintiffs therefore cannot allege that L.A. Care breached the agreements with respect to these claims.

The Complaint fails to state a claim for breach of contract, and the First and Fifth Claims for Relief should therefore be dismissed.

2. The Second and Sixth Claims for Relief fail to state a claim for turnover.

The Complaint's turnover claims rely entirely on the unfounded and incorrect legal conclusions that the amounts allegedly owed by L.A. Care are "property of [Plaintiffs'] estate[s]" (Complaint ¶¶ 21, 48.) To the contrary, as noted above: "turnover proceedings involve return of undisputed funds. Here, the amounts, if any, owed to [Plaintiffs] by [L.A. Care] are in dispute, and this dispute rests on breach of contract issues." *Gurga*, 176 B.R. at 199. The turnover provision of the Bankruptcy Code, Section 542, may not be used to acquire rights the debtor does not have as of the commencement of the case or to determine disputed rights to property; rather, it is intended as a remedy to obtain what is acknowledged to be property of the estate. *Id*.; *Victoria Alloys, Inc. v. Fortis Bank SA/NV* (*In re Victoria Alloys, Inc.),* 21 B.R. 424 (Bankr. N.D. Ohio 2001); *Marlow v. Oakland Gin Co.* (*In re Julien Co.),* 128 B.R. 987 (Bankr. W.D. Tenn. 1991), *aff'd*, 44 F. 3d 426 (6th Cir. 1995). The debtor cannot use Section 542 to liquidate contract disputes or otherwise demand assets when their title is in dispute. *United States v. Inslaw, Inc.*, 932 F. 2d 1467 (D.C. Cir. 1991); *see, also Charter Crude Oil Co. v. Exxon Co., U.S.A.* (913 F. 2d 1575 (11th Cir. 1990); *FLR Co. v. Brant Constr. Co.* (*In re FLR Co.*), 58 B.R. 632 (Bankr. W.D. Pa. 1985).

Because the amounts L.A. Care allegedly failed to pay to Plaintiffs are all disputed amounts that Plaintiffs claim as damages for L.A. Care's purported breaches of its contracts with Plaintiffs, Plaintiffs have not alleged any property in L.A. Care's possession, custody or control that is subject to turnover. *Id.* If, as Plaintiffs appear to allege, any time a party allegedly owes a disputed amount of money to another party, the latter has a turnover claim, all collection actions of whatever nature, whether based on contract or tort, and whether disputed or undisputed, would be core turnover proceedings. That is clearly not the case. The Second and Sixth Claims for Relief must

therefore be dismissed.

3. The Third and Seventh Claims for Relief fail to state a claim for unjust enrichment.

"There is no cause of action in California for unjust enrichment." *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1370 (2010). Plaintiffs' Third and Seventh Claims for Relief, denominated "unjust enrichment," are really a claim for restitution under a quasi-contract or *quantum meruit* theory. *Id.* The Third and Seventh Claims for Relief for quasi-contract damages fail to state a claim for three reasons.

First, Plaintiffs' so-called unjust enrichment claims must be dismissed because L.A. Care and the Plaintiffs entered into enforceable written contracts, and "[a]s a matter of law, an unjust enrichment claim does not lie where the parties have an enforceable express contract." *Id*.

Second, Plaintiffs' so-called unjust enrichment claims must be dismissed because, as a government entity, L.A. Care cannot be held liable under a quasi-contract theory. *Katsura v. City of San Buenaventura*, 155 Cal. App. 4th 104, 109–10 (2007) ("It is settled that a private party cannot sue a public entity on an implied-in-law or quasi-contract theory, because such a theory is based on quantum meruit or restitution considerations which are outweighed by the need to protect and limit a public entity's contractual obligations."); *Green Valley Landowners Assn. v. City of Vallejo*, 241 Cal. App. 4th 425, 438 (2015) ("[A]ll implied contracts against public entities are barred because, by definition, they have not formally been approved by the entity.").

Finally, Plaintiff's Third and Seventh Claims for Relief must be dismissed because the Complaint does not allege sufficient facts in support of the elements of an "unjust enrichment" claim. The elements of an "unjust enrichment" claim are: (1) the defendant received a benefit at the expense of the plaintiff; and (2) it would be unjust for the defendant to retain the benefit conferred. *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1370 (2010). Plaintiffs have not alleged that they conferred any benefit upon L.A. Care, because the Complaint does not allege that the medical services Plaintiffs

purportedly provided L.A. Care's members were "covered medical services." Even if L.A. Care did receive a benefit at Plaintiffs' expense, the Complaint does not allege that L.A. Care wrongfully retained the benefit conferred. As mentioned above, the Complaint does not allege facts demonstrating that L.A. Care breached its agreements with Plaintiffs or that Plaintiffs satisfied all of the requirements necessary to trigger L.A. Care's obligation to pay for the services Plaintiffs allegedly provided. (*Supra* Section 4.C.1.) If L.A. Care was not required to pay for the services, then it could not have wrongfully withheld the benefit of those services.

4. The Fourth and Eighth Claims for Relief fail to state a claim for violations of the automatic stay.

Plaintiffs do not allege that L.A. Care violated the automatic stay. Instead, they allege that L.A. Care made deductions that, "based on information and belief," arose prior to the Petition Date. (Complaint ¶¶ 34, 61.) Plaintiffs cannot merely make hunches and guesses; they must allege facts sufficient to demonstrate that they are plausibly entitled to relief. *Twombly*, 550 U.S. at 551, 555 (dismissing complaint that "couches its ultimate allegations" as being made "upon information and belief"). Moreover, almost half of the purportedly wrongful "setoffs" occurred in August 2018, before Plaintiffs even commenced these cases. (Complaint ¶ 8; *id*. at Exh. E.)

The fundamental problem, however, is Plaintiffs' false conclusory allegations that any of these purported amounts are "setoffs" that violated the automatic stay. They are not. As the agreements between Plaintiffs and L.A. Care make clear, L.A. Care had the right to reduce future payments to Plaintiffs for any overpayments L.A. Care made. (Complaint at Exh. A ¶ 2.6; *id*. at Exh. C ¶ 3.6.) This is a textbook example of recoupment and not a "setoff." *In re TLC Hosps.,* Inc., 224 F.3d 1008, 1011-13 (9th Cir. 2000) (U.S. Department of Health and Human Services' reduction of Medicare reimbursements by previous overpayments was a recoupment and not a setoff).

"It is well settled . . . that a bankruptcy defendant can meet a plaintiff-debtor's claim with a counterclaim arising out of the same transaction, at least to the extent that

the defendant merely seeks recoupment." *Reiter v. Cooper*, 507 U.S. 258, 265 n.2 (1993) (citing *In re B & L Oil Co*., 782 F.2d 155, 157 (10th Cir. 1986) and *Lee v. Schweiker*, 739 F.2d 870, 875 (3rd Cir. 1984)). Claims arise from "the same transaction" for purposes of recoupment in bankruptcy where, as here, "the creditor's claim against the debtor and the debtor's claim against the creditor arise out of the same contract." *Lee*, 739 F.2d at 875; *see also B & L Oil Co*., 782 F.2d at 157 (overpayment on earlier purchases under a contract can be recouped against later purchases under same contract); *In re ETM Entertainment Network, Inc.,* 154 Fed.Appx. 4, 5 (9th Cir. 2005) (recoupment allowed for offsetting claims under the same contract).

Unlike setoff, recoupment is an equitable doctrine that "exempts a debt from the automatic stay when the debt is inextricably tied up in the post-petition claim . . . and thus may be employed to recover across the petition date." *TLC Hosps.,* Inc., 224 F.3d at 1011. Consequently, property of the estate is taken subject to any right to recoupment, and recoupment does not violate the automatic stay even if the party's right to recoupment arose before the bankruptcy filing and is used to reduce the party's post-petition obligations to the debtor. *Id*. (recouping pre-petition overpayments to healthcare provider from payments due for post-petition services rendered does not violate stay); *In re Holford*, 896 F.2d 176, 179 (5th Cir. 1990) (no violation of stay for recouping pre-petition overpayments for rent against post-petition rent payments to debtor); *B & L Oil Co.,* 782 F.2d at 157 (oil company permitted to recoup overpayment on pre-petition oil purchase from payments due for post-petition oil purchases from debtor).

The Complaint alleges a recoupment by L.A. Care and not a setoff, an thus, the Complaint does not allege a violation of the automatic stay. The Fourth and Eighth Claims for Relief must therefore be dismissed.

5. The Ninth Claim for Relief fails to state a claim for injunctive relief.

The Ninth Claim for Relief fails to state a claim for injunctive relief because "injunctive relief is a remedy and not, in itself, a cause of action." *Marcus v. ABC*

Signature Studios, Inc., 279 F. Supp. 3d 1056, 1073 (C.D. Cal. 2017). Because there is no cause of action for "injunctive relief," the Complaint does not and cannot state a valid claim. *Id.* A claim for injunctive relief should be included, if at all, in the Plaintiffs' prayer for relief. *Hafiz v. Greenpoint Mortg. Funding, Inc.*, 652 F.Supp.2d 1039, 1049 (2009).

The Ninth Claim for Relief also seeks punitive damages in the event the Court were to enter an injunction and L.A. Care were later to violate it. Not only is a claim for punitive damages a remedy and not a cause of action, L.A. Care is not subject to claims for punitive damages. Cal. Gov't Code § 818. Worse still, this Court doesn't even have jurisdiction over the purported "claim for punitive damages" because the punitive damages would apply only to conduct that has not yet occurred and that might somehow violate an injunction that has not even been issued. *Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all."). Finally, Plaintiffs contractually waived any right to recover punitive damages. (Complaint at Exh. A ¶ 2.6 ("The parties agree that the arbitrator shall not have the right to award punitive damages."); *id.* at Exh. C ¶ 3.6 (same).)

D. If the Court Finds that the Complaint Somehow States a Claim, the Court Must Nonetheless Stay this Action Pending Arbitration.

As discussed above, Plaintiffs contractually agreed to arbitrate each of the claims they are asserting in this action. (Complaint at Exh. A ¶ 7.3; *id.* at Exh. C ¶ 6.3.) Plaintiffs' claims, all of which arise under the contracts between L.A. Care and Plaintiffs are "noncore" claims, and "a bankruptcy court must enforce an agreement to arbitrate a claim that is noncore." *In re Gurga*, 176 B.R. at 197, 199. In the event that this Court finds that the Complaint somehow states a valid claim, this Court must stay this proceeding so that the parties can arbitrate the dispute. *Id.*; 9 U.S.C. § 3. Section 3 of the FAA is crystal clear on this issue:

> If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which

> such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

V. CONCLUSION

Plaintiffs agreed to arbitrate the claims asserted in the Complaint, but they have failed to do so. Plaintiffs were required to satisfy the claims presentation requirements of the Government Claims Act, but they have failed to do so. Plaintiffs were required to state sufficient facts demonstrating that they were plausibly entitled to relief, but they have not done so. For these reasons and for all of the above-stated reasons, L.A. Care respectfully requests that this Court dismiss the Complaint or, in the alternative, stay the proceeding pending arbitration.

DATED: February 15, 2019

HANSON BRIDGETT LLP

By: */s/ Neal L. Wolf*
NEAL L. WOLF
ANTHONY J. DUTRA
Attorneys for Local Initiative Health Authority for Los Angeles County operating as L.A. Care Health Plan

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 425 Market Street, 26th Floor, San Francisco, California, 94105

A true and correct copy of the foregoing document entitled (*specify*):

MOTION FOR ENTRY OF ORDER DISMISSING COMPLAINT OR, IN THE ALTERNATIVE, MOTION FOR ENTRY OF ORDER STAYING TRIAL OF ADVERSARY PROCEEDING, AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On February 15, 2019, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Steven J Kahn skahn@pszyjw.com
United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

☐ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:
On February 15, 2019, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Honorable Judge Ernest M. Robles
U.S. Bankruptcy Court
Roybal Federal Building
255 E. Temple Street
Suite 1560
Los Angeles, CA 90012

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

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

February 15, 2019	LILLIAN A. BYRD	
Date	*Printed Name*	*Signature*

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.