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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 ASC, LLC

Debtors and Debtors in Possession.

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

Plaintiffs,

v.

CHAPTER 11

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

Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

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

DEFENDANTS' NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT PURSUANT TO CAL. CIV. PROC. CODE § 425.16; MEMORANDUM OF POINTS AND AUTHORITIES

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

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.

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants Strategic Global Management, Inc. ("SGM"), Kali P. Chaudhuri, M.D., KPC Healthcare Holdings, Inc., KPC Health Plan Holdings, Inc., KPC Healthcare, Inc., and KPC Global Management, LLC, (collectively, the "Non-SGM Defendants"), hereby move for an order striking, pursuant to section 425.16 of the California Code of Civil Procedure, each claim in the Adversary Complaint filed by plaintiffs Verity Health System of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center, and Verity Holdings, LLC (collectively, "Plaintiffs" or "Debtors").

PLEASE TAKE FURTHER NOTICE that the Motion is based on this Notice of Motion and Motion, the accompanying Request for Judicial Notice, the arguments of counsel at any hearing on the Motion, and any other admissible evidence brought before the Court.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Bankruptcy Rule 9013-1(f), any party that wishes to oppose the relief requested in the Motion must file not later than 14 days prior to the scheduled hearing date, with the Clerk of the Bankruptcy Court, located at 255 East Temple Street, Los Angeles, California, and serve upon Defendants' counsel, located at the address indicated on the upper left corner of the first page of this notice, "[a] complete written statement of all reasons in opposition thereto . . . , declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities."

PLEASE TAKE FURTHER NOTICE that, pursuant to Local Bankruptcy Rule 9013-1(h), failure to file and serve a timely response may be deemed consent to the relief requested in the Motion.

Dated: February 19, 2020

By:________________________________
Kevin D. Rising
L. Rachel Lerman
Joel R. Meyer
Counsel for Strategic Global Management, Inc.; Kali P., Chaudhuri, M.D.; KPC Healthcare Holdings, Inc.; KPC Healthcare, Inc., KPC Global Management, LLC

MEMORANDUM OF POINTS AND AUTHORITIES

Defendants Strategic Global Management, Inc. ("SGM"), Dr. Kali P. Chaudhuri, KPC Healthcare Holdings, Inc., KPC Health Plan Holdings, Inc., KPC Healthcare, Inc., and KPC Global Management, LLC (excluding SGM, "Non-SGM Defendants") submit this memorandum in support of their special motion to strike pursuant to section 425.16 of the California Code of Civil Procedure, which seeks to strike each claim in the Adversary Complaint filed by plaintiffs Verity Health System of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center, and Verity Holdings, LLC (collectively, "Plaintiffs" or "Debtors").[1]

I. INTRODUCTION

Ever since SGM started to argue that Plaintiffs had not complied with their obligations under the parties' Asset Purchase Agreement ("APA"), Plaintiffs have attempted to punish SGM for having the audacity to assert its rights. Plaintiffs' Adversary Complaint is no different.

In their Complaint, Plaintiffs allege, among other things, that SGM allegedly breached the APA by not closing the transaction. However, Plaintiffs also contend that SGM breached the APA by essentially refusing to concede that it was obligated to close the $610 million transaction. Lest there be any doubt, Plaintiffs' breach of contract claim directly targeted SGM's advocacy including by "making unfounded and untimely assertions of alleged Material Adverse Effects," "asserting entitlement to an 'Evaluation Period' following entry of the Enforcement Order," "filing meritless and frivolous appeals," and "failing to cooperate with Plaintiffs and move with alacrity towards closing the SGM Sale." Compl. ¶ 100.

Plaintiffs also attempt to tortify this contract dispute by alleging that SGM did not intend to comply with the APA at the time it entered into the contract. This would likely be the first time

[1] This Motion is being filed solely for the purpose of raising the defenses herein, which generally must be raised in the initial response to the Complaint. By filing this Motion and in accordance with Fed. R. Bankr. P. 7012(b), Defendants are not consenting to the jurisdiction of Bankruptcy Court over this adversary proceeding, and dispute the Bankruptcy Court's authority to enter final judgment in connection with this Adversary Proceeding. All Defendants are hereby reserving all rights, claims, and defenses.

anyone has ever deposited $30 million while at the same time planning to breach the contract that would forfeit that $30 million.

Although Plaintiffs admit in their own Complaint that they were well aware of the Non-SGM Defendants and their respective relationships with SGM at the time Plaintiffs agreed to contract with just SGM (Compl. ¶ 41), Plaintiffs also sued these additional parties based on a disingenuous theory of alter-ego liability.

California's anti-SLAPP statute is a procedural remedy designed to discourage and quickly dispose of lawsuits and claims brought to chill the valid exercise of constitutional rights of petition or free speech. Cal. Civ. Pro. §425.16. Although the procedures are somewhat different, California's anti-SLAPP statute applies to state law claims brought in federal court. *Price v. Stossel,* 590 F. Supp. 2d 1262, 1267 (C.D. Cal. 2008).[2] To invoke the protection of the anti-SLAPP statute, the moving party simply must establish "that the challenged lawsuit arose from an act ... in furtherance of [the] right of petition or free speech." *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 61 (2002).

Plaintiffs' claims here all arise from Defendants' alleged protected activity in the bankruptcy proceeding and are thus covered by the anti-SLAPP statute. *See Crossroads Inv'rs, L.P. v. Fed. Nat'l Mortg. Assn.,* 13 Cal. App. 5th 757, 781 (2017); *see also Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1116 (1999) ("[A]ll that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding."). Because the claims arise from protected activity, the claims must be stricken if Plaintiffs cannot substantiate them. Plaintiffs cannot meet their burden for numerous reasons.

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[2] In the Ninth Circuit's decision in *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir.), amended, 897 F.3d 1224 (9th Cir. 2018), the Court of Appeals explained the rule regarding Plaintiffs' burden to substantiate their claims. If the anti-SLAPP motion challenges the legal sufficiency of the claims, as Defendants do here, then the FRCP Rule 12(b)(6) standard applies.

As an initial matter, Plaintiffs' claims all fail because they depend on Plaintiffs first establishing that they satisfied all conditions to close the sale. If they did not satisfy the conditions to close, Plaintiffs cannot establish that they were at all wronged by Defendants or suffered any damages as a result of any the alleged breaches or alleged misrepresentation. Here, the pleadings show that Plaintiffs had not satisfied the condition in APA Section 8.7 before they sent their demand to close on November 20, 2019.

Plaintiffs' claim for promissory fraud also fails for two additional reasons. **First**, Defendants' alleged misrepresentations were made during the course of the bankruptcy proceeding and are thus covered by the litigation privilege. Cal. Civ. Code. §47(b). **Second**, even if the alleged false promise was not privileged (it is), Plaintiffs' false promise claim also fails because Plaintiffs' specific allegations negate Plaintiffs' fraud theory. Plaintiffs' fraud theory is that Defendants intended to breach the contract from the time they entered it. Compl. ¶ 102. Yet, Plaintiffs' specific allegations reveal that is not true. Plaintiffs allege that Defendants "never anticipated" that Plaintiffs would satisfy the conditions in the contract and "believed they would never be obligated to pay the full purchase price." Compl. ¶ 58. This allegation conclusively shows that Defendants just had the opinion they would never be obligated to pay, as opposed to a belief that they would be obligated and an intention to breach that obligation. Because Plaintiffs allege Defendants never anticipated the obligation arising, Defendants could not have the fraudulent intent necessary for a fraud claim.

Plaintiffs' claim for tortious breach of contract also fails because the law does not recognize a claim for "tortious breach of the implied covenant of good faith and fair dealing" in arms-length transactions such at the one at issue here. *See Pension Tr. Fund for Operating Engineers v. Fed. Ins. Co.,* 307 F.3d 944, 955 (9th Cir. 2002). Even if this was a valid claim, the allegations are also covered by the litigation privilege.

Plaintiffs' claims against the Non-SGM Defendants fail because Plaintiffs cannot substantiate their alter-ego allegations. Courts do not allow plaintiffs to invoke the alter-ego doctrine as a substitute for obtaining contractual guarantees from alleged alter-egos that the plaintiffs knew existed at the time of contracting. *See Lynch v. McDonald*, 155 Cal. 704, 706–07

(1909). Here, Plaintiffs admit in their Complaint that they had extensive knowledge of the relationship between SGM and the Non-SGM Defendants before they entered into the APA. *See* Compl. ¶¶ 41-44. With that knowledge, Plaintiffs agreed to contract solely with SGM, likely believing SGM's $30 million deposit gave them adequate security. Plaintiffs cannot circumvent this negotiated relationship with manufactured and false allegations of alter-ego.

For these reasons, Defendants request that the Court strike all of Plaintiffs' claims and enter judgment in favor of Defendants.

II. <u>PLAINTIFFS' ALLEGATIONS</u>

A. SGM's Offer to Purchase the Hospitals

After 25 years of substantial operating losses and any number of attempts to rescue their hospitals, Plaintiffs filed their bankruptcy petition on August 31, 2018 and instituted a process to sell most of their assets. Compl. ¶ 37.

SGM made an offer to purchase four of Plaintiffs' hospitals. Plaintiffs quoted large portions of SGM's offer in their Complaint. Compl. ¶ 41. Notably, the offer letter discussed in detail the relationship between SGM and various other affiliated companies. *Id.* Regarding SGM, it stated:

> Strategic Global Management Inc. ("SGM or "Strategic") is a venture company used to acquire assets and businesses, through companies which are affiliated or associated (through common ownership and otherwise) with SGM, but which are not subsidiaries of SGM.

Id. The letter also explains that defendant KPC HealthCare, Inc. is owned by employees, and not Dr. Chaudhuri or another affiliated entity: "KPC Health has been sold to an Employee Stock Ownership Plan ("ESOP") and now operates for the benefits of its employees but remains managed by SGM affiliates under a long-term agreement." *Id.*

To support its offer, SGM also provided a letter that showed that Dr. Chaudhuri had a certain amount of liquid assets personally. Compl. ¶ 42.

After various meetings with SGM representatives, the Debtors ultimately selected SGM to serve as the stalking-horse bidder. Compl. ¶ 43.

B. The Asset Purchase Agreement

With knowledge of these various related entities, Plaintiffs agreed to enter into an APA with just SGM. Compl., Exh. A ("APA"). The APA was subject to numerous conditions that would need to occur first before SGM would have an obligation to close. Some examples include:

- Because SGM was the stalking-horse bidder, Plaintiffs had the ability to find a buyer (or buyers) who would outbid SGM and then could, of course, choose to sale the assets to the other buyer and cancel the agreement with SGM (APA § 6.1);
- The APA was subject to Bankruptcy Court Approval (APA §§ 7.6 & 8.2);
- The APA needed approval by the California Attorney General (APA § 8.6); and
- The Debtors had to reach agreements with CMS and DHCS that would allow the transfer of the Medicare and Medical provider agreements free and clear of all known and unknown potential future claims. APA § 8.7.

When it entered into the contract, SGM also made a "good faith deposit" of $30 million that could be lost if SGM did not comply with an obligation to close. APA § 1.2. Of course, Plaintiffs were obligated to return the deposit if they did not comply with their obligations. APA §§ 1.2 & 11.2.

C. Defendants' Alleged Mindset When Agreeing to APA

Plaintiffs contend that Defendants believed that the Plaintiffs would never be able to satisfy the conditions in the APA and thus Defendants would never be obligated to close at the price set forth in the agreement. Compl. ¶ 58. Plaintiffs alleged:

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

Compl. at Preliminary Statement; ¶ 58 (emphasis added).

D. Court Rejects California Attorney General's Additional Conditions

On September 25, 2019, the Attorney General consented to the sale but included conditions that were "materially different" than those SGM agreed to in the APA. Compl. ¶ 70. On October 23, 2019, the Bankruptcy Court issued a memorandum of decision finding that the materially different conditions the AG had imposed were not enforceable under the Bankruptcy Code. *Id.* ¶71. After this ruling, Plaintiffs and the AG reached a stipulation wherein the AG released its rights to appeal the ruling in return for the Bankruptcy Court setting aside this decision that could potentially be used as precedent that would weaken the AG in the future. Compl. ¶ 72; Request for Judicial Notice "RJN", Ex. F. SGM objected to the proposed order submitted by the AG and Plaintiffs. Compl. ¶ 72, RJN, Ex. I. On November 14, 2019, the Bankruptcy Court entered the order that the property could be sold free and clear without any additional conditions. Compl. ¶¶ 73-74.

Plaintiffs again alleged that "**SGM did not anticipate** such a favorable order would be entered, but instead anticipated that a supplemental sale order would trigger the Evaluation Period under Section 8.6 of the APA, which would give SGM the option to withdraw from the transaction and/or coerce the Plaintiffs to agree to a substantially reduced purchase price." Compl. ¶ 76 (emphasis added).

E. Plaintiffs' Alleged Attempt to Satisfy Section 8.7

Section 8.7 of the APA obligated Plaintiffs to transfer their Medicare and Medi-Cal provider agreements to SGM pursuant to "settlement agreements" with CMS (Medicare) and DHCS (Medi-Cal). Such transfers are critical because the purchasing entity cannot obtain payment for services to patients covered by Medicare and Medi-Cal without a provider agreement. Section 8.7 provides:

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

> succeed to the quality history associated with the relevant . . . Medi-Cal provider agreements assigned and shall be treated, for purposed of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.

APA § 8.7.

For background, the Plaintiffs had accumulated substantial liabilities to DHCS, which administers Medi-Cal in California, for unpaid Hospital Quality Assurance Fees ("HQA Fees"), and for Medi-Cal fee-for-service overpayments. On March 22, 2019, DHSC filed an objection to the proposed sale to SGM, arguing that the Medi-Cal provider agreements between it and the Plaintiffs were executory contracts that could not be transferred free and clear of claims, interests, and encumbrances unless all defaults were cured, as required by Bankruptcy Code § 365(b). RJN, Ex. M. Thus, according to DHCS, the provider agreements associated with each of the hospitals could not be transferred to SGM unless and until the Plaintiffs cured the unpaid HQAF and fee-for-service overpayments. *Id.* In response to DHCS's objection to the sale on April 10, 2019, the Plaintiffs argued that they did not need do so because the Medi-Cal agreements are non-executory contracts. RJN, Ex. P.

On May 2, 2019, the Court entered its Sale Order authorizing the sale of the Plaintiffs' assets to SGM free and clear of claims, liens, and encumbrances. RJN, Ex. B. However, the Sale Order expressly carved out Medi-Cal Provider Agreements from the released claims, liens, and encumbrances. Specifically, the Sale Order states: "Nothing in this Sale Order shall apply to Medical Provider Agreements until and unless there is a court order approving a settlement between the Debtors and the DHCS or a court order resolving the DHCS's objection." *Id.*

On September 11, 2019, DHCS filed a Supplemental Brief regarding its unresolved objection to the Sale of the hospitals free and clear of Debtors' Medi-Cal Provider Agreements. RJN, Ex. C. The Plaintiffs contested DHCS's characterization of the Medi-Cal Provider Agreements as executory contracts. In its Supplemental Brief, 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" in order for the Provider Agreements to be transferred to SGM. RJN Ex C at 7-11. The Plaintiffs filed a Reply Brief in which they once again argued that the Provider Agreements could be transferred free and clear of any liens and claims without compliance with Bankruptcy Code § 365, while recognizing the need to provide SGM with such a transfer to satisfy its contractual obligations. RJN, Ex. D at 13.

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

Despite the Court's statement in its Memorandum of Decision that it was not deciding the recoupment issue, on October 8, 2019, Plaintiffs lodged a proposed order seeking to prevent Medi-Cal from recouping payments from future SGM receivables in connection with the transfer of the Medi-Cal Provider Agreements. RJN, Ex. O. The next day, DHCS objected to the Debtors' proposed order, noting that "the proposed order is not 'consistent' with the Memorandum [of Decision]" and that "it overreaches by inserting gratuitous terms, to, for example, prohibit the Department's recoupment after the sale." RJN, Ex. G.

On October 11, 2019, the Court agreed with DHCS that the Plaintiffs' proposed order was overreaching, stating that: "the Memorandum Decision did not determine whether DHCS' recoupment rights against SGM (if any) are extinguished by the transfer of the Provider Agreements free and clear of claims, interests, and encumbrances." RJN, Ex. H at fn. 2. When entering the Order on October 11, 2019, the Court deleted the word "recoup" from the section providing for a transfer of the Medi-Cal Provider Agreements free and clear of claims, and expressly stated that it was reserving the issue of DHCS's recoupment rights for future adjudication. *Id.* The Court thus left open the question of whether the Medi-Cal Provider Agreements can be transferred free of recoupment rights.

Nevertheless, in their Complaint, the Plaintiffs argued (notwithstanding: (1) § 8.7's requirement of a "settlement agreement"; and (2) the reservation of "recoupment in the October 11 order) that the Court's orders satisfied section 8.7 because they "afforded equal or better protection to SGM than any settlement could have…." Compl. ¶ 77.

F. Plaintiffs Send Notice of Closing

On November 20, 2019, Plaintiffs sent SGM a letter representing that they had satisfied the conditions to close on November 19, 2019 and unilaterally noticed a closing of the transaction for December 5, 2019. Compl. ¶ 85. Defendants responded by explaining, among other things, that Plaintiffs had not complied with the conditions to close. *Id.* at ¶ 87.

G. Plaintiffs' Claims

Plaintiffs filed this Adversary Action on January 3, 2020. Plaintiffs assert three causes of action: (1) breach of contract; (2) promissory fraud; and (3) a claim described as "tortious breach of contract (breach of the implied covenant of good faith)."

Plaintiffs allege that SGM breached the APA by:

> (a) failing to consummate and close the Sale transaction in accordance with the APA; (b) failing to have funds available to close the Sale at the price set forth in the APA; (c) representing in Section 3.9 of the APA and elsewhere that they had the ability to obtain "funds in cash in amounts equal to the purchase price;" (d) attempting to coerce Plaintiffs to agree to a substantially reduced purchase price, (e) failing to cooperate with Plaintiffs and move with alacrity towards closing the SGM Sale; (f) making unfounded and untimely assertions of alleged Material Adverse Effects; (g) asserting entitlement to an "Evaluation Period" when no such period existed after the entry of the Enforcement Order, the Section 8.6 Order and the Closing Order; (h) appealing the Enforcement Order to avoid its' obligation to close and despite the APA's requirement that Defendants cooperate to render it a final, nonappealable order; and (i) filing meritless and frivolous Notices of Appeal.

For their promissory fraud claim, Plaintiffs contend that at the time SGM entered into the APA, "Defendants had no intention of performing in accordance with the APA, including (without limitation) by paying the $610 million purchase price." Compl. ¶ 102.

Plaintiffs also assert a claim for tortious breach of contract, which is largely duplicative of its breach of contract claim. Compl. ¶¶ 106-110.

Based on allegations of alter-ego, agency, and conspiracy, Plaintiffs assert the same three claims against the Non-SGM Defendants also. *See* Compl. ¶¶ 18-26.

III. THE COURT SHOULD GRANT DEFENDANTS' SPECIAL MOTION TO STRIKE.

California's anti-SLAPP statute, California Code of Civil Procedure section 425.16, "is designed to protect citizens in the exercise of their First Amendment constitutional rights of free speech and petition." *Church of Scientology of Cal. v. Wollersheim,* 42 Cal. App. 4th 628,644 (1996) (disapproved on other grounds by *Equilon Enters. v. Consumer Cause, Inc.,* 29 Cal.4th 53, 68 n.5, 124 (2002)). The California Legislature reasoned "that it is in the public interest to encourage continued participation in matters of public significance…." Cal. Civ. Pro. §425.16(a). Section 425.16(b)(l) provides that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or the California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim."

California's anti-SLAPP statute applies to state law claims brought in federal court. *Price v. Stossel,* 590 F. Supp. 2d 1262, 1267 (C.D. Cal. 2008). Indeed, the Ninth Circuit has held that the statute should be "construed broadly" in California federal courts in accordance with the statute's mandate. *Mindys Cosmetics, Inc. v. Dakar*, 611 F.3d 590, 595 (9th Cir. 2010) ("we follow the California Legislature's direction that the anti-SLAPP statute be 'construed broadly'").

The application of section 425.16 involves a two-pronged analysis.

Initially, to invoke the protection of the statute, the moving party must establish "that the challenged lawsuit arose from an act ... in furtherance of [the] right of petition or free speech." *Equilon,* 29 Cal. 4th at 61. To make this determination, the court shall consider whether the challenged claim arises from protected activity. *Id.*

After the moving party meets the burden of showing that one or more challenged claims arise from protected activity, the burden then shifts to the plaintiffs to defend the claims. In the Ninth Circuit's decision in *Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress*, 890 F.3d 828, 834 (9th Cir.), amended, 897 F.3d 1224 (9th Cir. 2018), the Court modified the rule regarding Plaintiffs' burden to substantiate their claims. If the anti-SLAPP motion challenges the legal sufficiency of the claims, then the FRCP Rule 12(b)(6) standard applies. On the other hand, when the motion challenges the factual sufficiency of the claims, then the FRCP Rule 56 standard applies. In this Motion, Defendants contend that Plaintiffs' claims fail as matter of law based on the Rule 12(b)(6) standard.

A. Plaintiffs' Claims Arise from Protected Activity.

The anti-SLAPP statutes defines an "act in furtherance of a person's right of petition or free speech" to include: "(1) any written or oral statement or writing made before a ... judicial proceeding ... , [and] (2) any written or oral statement or writing made in connection with an issue under consideration or review by a ... judicial body ...." (Code Civ. Proc., § 425.16, subd. (e)(1), (2); *see also Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1116 (1999) ("[A]ll that matters is that the First Amendment activity take place in an official proceeding or be made in connection with an issue being reviewed by an official proceeding.") "A statement is 'in connection with' an issue under consideration by a court in a judicial proceeding within the meaning of clause (2) of [Code of Civil Procedure] section 425.16, subdivision (e) if it relates to a substantive issue in the proceeding and is directed to a person having some interest in the proceeding. [Citation.]" *Fremont Reorganizing Corp. v. Faigin*, 198 Cal. App. 4th 1153, 1167 (2011).

Indeed, courts have repeatedly applied a broad interpretation to apply the anti-SLAPP statute in numerous proceedings. *See, e.g., Graham-Sult v. Clainos*, 738 F.3d 1131, 1142–1143 (9th Cir. 2013) (finding anti-SLAPP statute applied to claims based on representations made in writing to probate court); *Kibler v. N. Inyo Cty. Local Hosp. Dist.,* 39 Cal. 4th 192, 199 (2006) (finding medical peer review proceedings were covered by anti-SLAPP because they involved a "matter of public significance" – i.e., quality of hospital care).

Based on this broad principle, courts have found that statements and conduct related to a bankruptcy proceeding are covered by the anti-SLAPP statute. *See Crossroads Inv'rs, L.P. v. Fed. Nat'l Mortg. Assn.,* 13 Cal. App. 5th 757, 781 (2017) (finding that Fannie Mae's discovery responses and settlement discussions in an ongoing bankruptcy action arose from protected activity under the anti-SLAPP statute). In *Crossroads*, the Court agreed with Fannie Mae that even its failure to respond to requests were covered by the anti-SLAPP statute, concluding they "were protected activity because they were made in connection with issues under review in the bankruptcy proceeding." *Id.* at. 779.

Here, Defendants' satisfy the first prong because Plaintiffs' claims all arise from protected activity.

1. Plaintiffs' Breach of Contract and Breach of Implied Covenant Claims All Arise from Protected Activity.

Plaintiffs' claims for breach of contract and breach of the implied covenant of good faith all relate to SGM's alleged statements and conduct in the bankruptcy proceeding and thus arise from protected activity. *See Crossroads Inv'rs,* 13 Cal. App. 5th at 781; *see also Navellier v. Sletten*, 29 Cal. 4th 82, 92-93 (2002) (explaining claims for breach of contract "may also come within constitutionally protected speech of petitioning"). For example, in *Navellier*, the California Supreme Court explained that a party's "negotiation and execution" of a release "involved statement[s] or writing[s] made in connection with an issue under consideration or review by a ... judicial body…." *Navellier*, 29 Cal. 4th 82 at 90.

Here, the contract at issue was negotiated during the bankruptcy proceeding, involved the sale of Plaintiffs' hospitals, and was subject to conditions that expressly required the approvals of both the Bankruptcy Court and the California Attorney General. These facts alone easily show that Plaintiffs' claims all arise from protected activity under the broad standard set forth by the anti-SLAPP statute.

What is more, a majority of the breach allegations arise from Defendants' advocacy during the proceedings. Plaintiffs contend that SGM breached the APA by such activity as: "making unfounded and untimely assertions of alleged Material Adverse Effects," "asserting entitlement to an 'Evaluation Period,'" "filing meritless and frivolous Notices of Appeal," "attempting to coerce Plaintiffs to engage in a retrade," and "failing to respond to Plaintiffs' inquiries…." Compl. ¶ 100 & 107. Indeed, lawsuits arising from such litigation privileged activity fall squarely within the scope of section 425.16. *Healy v. Tuscany Hills Landscape & Recreation Corp.,* 137 Cal. App. 4th 1, 5 (2006) (explaining both the anti-SLAPP statute and the litigation privilege codified in Section 47(b) of the California Civil Code protect litigants' right of access to the courts without fear of being harassed subsequently by derivative actions); *Briggs v. Eden Council for Hope & Opportunity*, 19 Cal. 4th 1106, 1115 (1999) (finding statements protected by the litigation privilege are "equally entitled to the benefits of section 425.16").

Because Plaintiffs' breach of contract and breach of implied covenant claims directly arise from Defendants' protected activity, Plaintiffs must meet their burden of establishing that the claims have merit.

2. Plaintiffs' Promissory Fraud Claim Arises From An Alleged False Promise Made During the Bankruptcy Proceedings.

It is black letter law that a "misrepresentation or failure to disclose can be protected petitioning activity for purposes of section 425.16." *Suarez v. Trigg Labs., Inc.,* 3 Cal. App. 5th 118, 123–24 (2016); *see also Navellier*, 29 Cal. 4th 82, 92-93 (2002). For example, in *Navalier,* the California Supreme Court applied the anti-SLAPP statute to alleged "misrepresentations and omissions" in connection with the execution of a release agreed to in a federal action. *Id.* at 89. The plaintiff filed a subsequent action alleging the defendant Sletten "had committed fraud in misrepresenting his intention to be bound by the Release…." *Id.* at 87. The plaintiff alleged that Sletten failed to disclose that he was secretly not in agreement with the terms of the release. The California Supreme Court concluded that the defendant's "acts or omissions… falls squarely within the plain language of the anti-SLAPP statute." *Id.* at 90.

Similarly, in *Suarez*, the Court also concluded that claims based on a party's alleged failure to disclose a material fact that allegedly induced the party to agree to a settlement was protected by the anti-SLAPP statute. *Suarez v. Trigg Labs.,* 3 Cal. App. 5th at 123-24. The Court explained that the protection applies "even against allegations of fraudulent promises" made during the proceedings. *Id.* at 123.

The California Court of Appeal addressed analogous false promise allegations in *Navarro v. IHOP Properties, Inc.,* 134 Cal. App. 4th 834, 841-42 (2005). In that case, the plaintiff alleged that the defendant IHOP made false promises to induce the plaintiff to agree to a stipulated judgment in an unlawful detainer action. *Id.* The plaintiff alleged that:

> IHOP never intended to review [the proposed transaction between Navarro and her buyer] 'without undue delay,' and that its true intention was to stall and thereby prevent plaintiff from exercising her right to present an alternative purchaser until the expiration of the deadline for plaintiff to obtain approval of any potential sale of her interest, so that IHOP could regain possession of the Store or for some other reason inconsistent with the good-faith performance of the agreement embodied by the Stipulation.

The Court found that these alleged false promises were covered by the anti-SLAPP statute. *Id.*

Like the cases discussed above, here, Plaintiffs allege that Defendants made false promises to induce Plaintiffs to enter into an agreement during a judicial proceeding. Compl. ¶ 102. They claim that "Defendants concealed their true intention not to fund the $610 million purchase price under the APA, and instead to hold the estates, creditors, and patients of the Plaintiffs Hospitals hostage in an attempt to extort a lower purchase price." *Id.* These alleged false promises made during the bankruptcy proceeding fall squarely within the ambit of the anti-SLAPP statute.

Because Plaintiffs' claims all arise from protected activity, Plaintiffs must establish that the claims have merit in accordance with the second prong of the anti-SLAPP statute.

B. Plaintiffs Cannot Establish Their Claims Have Merit.

1. Plaintiffs' Claims All Fail Because Plaintiffs Cannot Establish they Satisfied Section 8.7 of the APA.

Plaintiffs' claims for breach of contract, breach of the implied covenant of good faith, and fraud all depend on Plaintiffs' first establishing that they satisfied all of the conditions to close the sale. If they did not satisfy the conditions to close, Plaintiffs cannot prove that any of the harm they have suffered was in anyway attributable to SGM.[3] Of course, Plaintiffs have the burden to establish that all conditions precedent have been satisfied. *Consolidated World Investments, Inc. v. Lido Preferred Ltd.,* 9 Cal. App. 4th 373, 380 (1992) ("[W]here defendant's duty to perform under the contract is conditioned on the happening of some event, the plaintiff must prove the

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

event transpired.”).

Here, Plaintiffs cannot establish that they satisfied the condition stated in section 8.7 of the APA. APA Section 8.7 obligated Plaintiffs to transfer their Medi-Care and Medi-Cal provider agreements to SGM pursuant to settlements with the CMS and DHCS. Section 8.7 provided:

> 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; provided, however, that Purchaser acknowledges that it will succeed to the quality history associated with the relevant Medicare or Medi-Cal provider agreements assigned and shall be treated, for purposed of survey and certification issues as if it is the relevant Seller and no change of ownership occurred.

On November 20, 2019, Plaintiffs sent Defendants a letter representing that all conditions to close had been satisfied on November 19, 2019 and that the sale should close by December 5, 2019. Compl. at ¶ 85. For that notice of closing to be valid, Plaintiffs need to have satisfied section 8.7 before November 20, 2019. However, Plaintiffs cannot meet this burden because Plaintiffs admit in their Complaint that they had not satisfied section 8.7 because they had not obtained a settlement agreement with DHCS before November 20, 2019. *Id.* at ¶ 77. Plaintiffs admit that, at the earliest, this agreement was not reached until November 22, 2019 (which, as discussed more below, is also not true). Nevertheless, because Plaintiffs admit their notice of closing was invalid, Defendants never had an obligation to close the transaction.

In their Complaint, Plaintiffs argue that they satisfied Section 8.7 even though they did not obtain a settlement agreement with DHCS. Plaintiffs contend they secured an “Order [Docket No. 3372] from the Bankruptcy Court authorizing the transfer free and clear of any interests asserted by DHCS, in addition to the Sale Order which terminated any creditor’s recoupment rights [Docket No. 2306]. Plaintiffs’ contend those “Orders afforded equal or greater protection to SGM than any settlement could have, thereby satisfying Section 8.7." This argument fails for multiple reasons.

a. Only A Settlement Agreement Satisfies Section 8.7

Section 8.7 unambiguously requires Plaintiffs to reach a "Settlement Agreement" with DHCS. There is nothing in Section 8.7 that allows Plaintiffs to satisfy this condition through some alternative means that Plaintiffs unilaterally decide is as good as a Settlement Agreement. SGM bargained for a Settlement Agreement that would guarantee that it would not have liability or a potential fight with DHCS. At best, the alleged orders that protected SGM would just give SGM an argument in a future dispute with DHCS. An argument is not an equal trade for a Settlement Agreement that would fully mitigate any risk and the need for making any argument at all.

b. The Court Orders Do Not Afford "Equal or Better Protection" Than A Settlement Agreement.

A review of the Orders also disputes Plaintiffs' characterization that these Orders "afforded equal or better protection" than a Settlement Agreement. Specifically, the Court's order on October 11 – the order at Docket No. 3372 referenced in the Complaint – expressly stated that the Court was reserving the issue of DHCS's recoupment rights for future adjudication. Accordingly, the risk of having the DHCS recoup from SGM the in excess of $70 million dollars of its claims against the Debtors, was the opposite of the full release and discharge required by §8.7.

On March, 22 2019, the California Department of Health Care Services filed an objection with the Bankruptcy Court to the Plaintiffs' proposed sale to SGM arguing that the Medi-Cal provider agreements between it and Plaintiffs were executory contracts under Bankruptcy Code §365, which could not be transferred to SGM free and clear of claims, interests, and encumbrances. RJN, Ex. M. Thus, according to DHCS, the Provider Agreements associated with each Hospital could not be transferred to SGM unless and until the Debtors cured the unpaid Hospital HQA Fees and fee-for-service overpayments as required by Bankruptcy Code §365(b).

In response, on April 10, 2019, despite its obligations to SGM to reach a settlement with

DHCS, Plaintiffs argued in its brief to the Bankruptcy Court that it not need do so, because the Medi-Cal agreements are non-executory contracts. RJN, Ex. P.

On May 2, 2019, the Bankruptcy Court entered its Sale Order authorizing the sale of Plaintiffs' assets to SGM free and clear of claims, liens, and encumbrances. RJN, Ex. B. Rather than resolve the executory contract dispute, the Sale Order expressly carved out Medical Provider Agreements from the released claims, liens, and encumbrances. Specifically, the Sale Order states: "Nothing in this Sale Order shall apply to Medical Provider Agreements until and unless there is a court order approving a settlement between the Debtors and the DHCS or a court order resolving the DHCS's objection." RJN, Ex. B.

On September 11, 2019, DHCS again objected to the sale of the hospitals free and clear of Debtors' Medi-Cal Provider Agreements. On September 26, 2019, the Bankruptcy Court issued its Memorandum of Decision Authorizing Debtors to Sell Medi-Cal Provider Agreements, Free and Clear of Interests Asserted by The California Department of Health Care Services, Pursuant to § 363(F)(5). RJN, Ex. E. In the Order, the Court ruled that the Medi-Cal Provider Agreements are not executory contracts and could be sold free and clear of liens, claims, and interests. However, importantly, the Court specifically stated that it was declining to decide the issue of applicability of recoupment subsequent to the transfer of Medi-Cal Provider Agreements. RJN, Ex. H at p. 4, fn. 2.

Plaintiffs' lodged a proposed order with respect to the Memorandum of Decision on October 8, 2019. RJN Ex. O. Despite the Court's clear statement that it was not deciding the recoupment issue, Plaintiffs' proposed order sought to prohibit recouping payments owed to SGM in connection with the transfer of the Medi-Cal Provider Agreements. *Id.*

Unsurprisingly, the next day, on October 9, 2019, DHCS objected to Plaintiffs' proposed order, noting that "the proposed order is not 'consistent' with the Memorandum [of Decision] and that "it overreaches by inserting gratuitous terms, to, for example, prohibit the Department's recoupment after the sale." RJN Ex. G.

On October 11, 2019, the Court agreed with DHCS that Plaintiffs' proposed order was overreaching. 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." RJN Ex. H at fn. 2. As such, when entering the Order, the Court deleted the word "recoup" from the section providing for a transfer of the Medi-Cal Provider Agreements free and clear, and expressly stated that it was reserving the issue of DHCS's recoupment rights for future adjudication. The Court explained:

> 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. *Id.*

DHCS appealed from the Court's October 11 Order. Thus, as of the entry of the Court's October 11 Order, the Debtors (1) had no "settlement agreement" with DHCS to satisfy the closing condition of § 8.7, (2) the only court order permitting the Debtors to transfer their the Medi-Cal Provider Agreements to SGM expressly left open DHCS's right to recoup from future SGM receivables and (3) the order authorizing the transfer was not final.

Even if Plaintiffs could substitute its obligation to obtain a settlement agreement with DHCS with an alleged better court order, Plaintiffs cannot meet their burden of establishing that this order offered equal protection because the Court expressly reserved the issue regarding DHCS's recoupment rights. In other words, had SGM closed the sale on December 5 as the Debtors had demanded, SGM would have been at risk for DHCS's recoupment from SGM's accounts receivables acquired in the sale for what had become $80 million of claims.

c. Plaintiff's Alleged November 22, 2019 Settlement Agreement With DHCS Does Not Save Plaintiffs.

Plaintiffs also allege that Plaintiffs reached a settlement agreement with DHCS on November 22, 2019. Compl. ¶ 77. As an initial matter, even if Plaintiffs did obtain a settlement agreement with DHCS on November 22, 2019, this would not justify its improper notice of closing that it sent two days earlier on November 20. That said, Plaintiffs have admitted in prior Court proceedings that they did not have any such agreement with DHCS.

Indeed, at a Court hearing on November 26, 2019, Plaintiffs' counsel stated: "While we believe we have satisfied the asset purchase agreement's obligation with regard to Medi-Cal [referring to the prior court orders], we also have continued to negotiate for a settlement and believe we have a settlement in principle, which we are now negotiating the terms of a written settlement agreement." RJN Ex. L at p. 10. Plaintiffs thus admitted that they did not have a final enforceable settlement agreement with DHCS as of November 26, 2019. Plaintiffs cannot seriously argue that "a settlement in principle" satisfied section 8.7. Again, at best, this would just leave SGM with an argument – and a bad one – that DHCS had released its claims.[4]

Because Plaintiffs cannot establish they satisfied section 8.7, Plaintiffs' claims should all be stricken.

2. Plaintiffs' Claim for Promissory Fraud Also Fails For Additional Reasons.

As explained below, Plaintiffs' claim for promissory fraud fails for two separate and distinct reasons. First, Plaintiffs' claim fails because the alleged false promises are protected by the litigation privilege. Second, even if the claims were not privileged, Plaintiffs' claims also fail because Plaintiffs' specific allegations contradict Plaintiffs' fraud theory.

a. The Alleged Fraudulent Representation is Protected by the Litigation Privilege.

One of the many purposes of the litigation privilege codified in section 47(b) of the California Civil Code is to "promote[] the effectiveness of judicial proceedings by encouraging 'open channels of communication and the presentation of evidence…." *Silberg v. Anderson*, 50 Cal. 3d 205, 213 (1990) (quoting *McClatchy Newspapers, Inc. v. Superior Court*, 189 Cal. App. 3d 961, 970 (Ct. App. 1987). Courts have explained that "such open communication is 'a

[4] Although they have not asserted this in their Complaint, Defendants believe that Plaintiffs may attempt to change their theory and argue that Plaintiffs' December 9, 2019 settlement with DHCS somehow satisfies Section 8.7. Such an argument would also fail for numerous reasons. First, a settlement agreement executed on December 9, 2019 cannot have required SGM to close *four days earlier* on December 5, 2019. Second, Plaintiffs' settlement with DHCS did not satisfy the requirements of Section 8.7 because it did not release all known and *unknown* claims as required by Section 8.7. Shortly after, on December 17, 2019, Plaintiffs sent notice that they were terminating the APA. Compl. at ¶98.

fundamental adjunct to the right of access to judicial and quasi-judicial proceedings.'" *Id.* (quoting *Pettitt v. Levy,* 28 Cal. App. 3d 484, 490-491, 104 (1972)). To be protected, the communications just need to "have some connection or logical relation to the action." *Id.* at 212*; see also Sacramento Brewing Co.,* 75 Cal. App. 4th 1082, 1089 (1999) ("The privilege should be denied only where it is so palpably irrelevant to the subject matter of the action that no reasonable person can doubt its irrelevancy.").

"To effectuate its vital purposes, the litigation privilege is held to be absolute in nature." *Silberg*, 50 Cal. 3d at 215. And, like the anti-SLAPP statute, "the litigation privilege is broadly applied and doubts are resolved in favor of the privilege." *Ramalingam v. Thompson*, 151 Cal. App. 4th 491, 500 (2007) (citations omitted).

It is also well-settled that a "bankruptcy proceeding is a judicial proceeding within the scope of California's litigation privilege." *In re Cedar Funding, Inc.*, 419 B.R. 807, 825 (B.A.P. 9th Cir. 2009); *see also Sacramento Brewing Co.*, 75 Cal. App. 4th 1082, 1086 (1999) (finding privilege applied to statement made in a motion filed in a bankruptcy proceeding); *Shoemaker v. Siegel*, No. 1:17-BK-015182-GM, 2017 WL 3671154, at *3 (C.D. Cal. Aug. 25, 2017), *aff'd sub nom. In re Shoemaker*, 749 F. App'x 565 (9th Cir. 2019) (finding that litigation privilege applied to claims of fraud and negligent misrepresentation arising from statements made in connection with a bankruptcy proceeding).

Of course, given its absolute nature, sections 47(b) provides a complete defense to claims arising from protected speech including claims of fraud. *Id.* (citing a litany of supporting cases). This includes claims for promissory fraud claims. *See, e.g., Navarro,* at 841-42 (2005) (finding Plaintiffs' claims that IHOP did not intend to comply with the release was also barred by the litigation privilege).

Here, like *Navarro*, plaintiffs' claims for promissory fraud arise from representations made during the course of a judicial proceeding. They are immune from tort liability based on the litigation privilege. The Court should thus strike Plaintiffs' fraud claim for this reason alone.

b. Plaintiffs' Allegations Do Not Support Fraud.

The elements of fraud are: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court*, 12 Cal. 4th 631, 638 (1996) (quoting Witkin, Summary of Cal. Law (9th ed. 1988) Torts § 676)). In general, statements about the future are considered to be opinions or predictions, not statements or fact, and are thus not actionable. *See Mueller v. San Diego Entm't Partners, LLC*, 260 F. Supp. 3d 1283, 1296 (S.D. Cal. 2017). That said, "an action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." *Lazar v. Superior Court,* 12 Cal. 4th 631, 638 (1996). However, importantly, to be actionable fraud, the plaintiff must establish that the defendant did not intend to comply with the contract at the time the defendant entered the contract. *Magpali v. Farmers Group, Inc.,* 48 Cal. App. 4th 471, 481 (1996) ("A promise of future conduct is actionable as fraud only if made without a present intent to perform.")

Here, Plaintiffs' own factual allegations contradict its claim that Defendants intended to breach the APA. According to Plaintiffs, Defendants "**never anticipated that** Plaintiffs would obtain agreement from the Attorney General of California not to impose conditions on the sale transactions" and thus "Defendants believed **they would never be obligated to** pay the full purchase price…." Compl. at Preliminary Statement; ¶58 (emphasis added). According to Plaintiffs' own allegations, Defendants did not intend to breach a contractual obligation; rather, Defendants just erroneously failed to anticipate the possibility that Plaintiffs would be able to satisfy the conditions in the contract. This is not fraud. Plaintiffs' allegations, at best, show that Defendants misjudged Plaintiffs' ability to satisfy the contract's conditions. However, because Defendants "never anticipated that they would be obligated to pay the full purchase price," Plaintiffs cannot establish that Defendants *intended* to breach an alleged obligation to pay that price. As Plaintiffs allege, Defendants never even imagined the possibility that would be obligated to pay the price and thus could not have planned to breach that obligation. Defendants thus did not have the requisite fraudulent intent as a matter of law.

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

Because Plaintiffs' allegations conclusively establish that Defendants did not have a present intent to not perform under the contract, Plaintiffs' claim for promissory fraud fails as a matter of law and should be stricken.

3. Many of the Alleged Breaches Are Also Covered by the Litigation Privilege.

The litigation privilege will also bar breach of contract claims if the contract does not "clearly prohibit" the challenged activity. *Vivian v. Labrucherie*, 214 Cal. App. 4th 267, 276 (2013); *see also Feldman v. 1100 Park Lane Assocs.,* 160 Cal. App. 4th 1467, 1497-98 (2008) (finding litigation privilege applied to breach claim arising from defendants' allegedly threatening and initiating litigation); *McNair v. City & Cty. of San Francisco*, 5 Cal. App. 5th 1154, 1171 (2016) (barring breach of contract claim when protected activity was not clearly prohibited by contract).

Plaintiffs allege numerous alleged breaches that are standard hallmarks of litigation protected activity as they all relate to SGM advocating its position that it was not obligated to close the transaction. Cal. Civ. Code § 47*; see also Silberg v. Anderson*, 50 Cal. 3d 205, 213-214 (1990) (explaining litigation privilege is intended to, among other things, encourage attorneys to "zealously protect" their client' interests and to afford litigants "utmost freedom of access" to courts). Plaintiffs' alleged breaches include: "(d) attempting to coerce Plaintiffs to agree to a substantially reduced purchase price, (e) failing to cooperate with Plaintiffs and move with alacrity towards closing the SGM Sale; (f) making unfounded and untimely assertions of alleged Material Adverse Effects; (g) asserting entitlement to an "Evaluation Period" when no such period existed after the entry of the Enforcement Order, the Section 8.6 Order and the Closing Order; (h) appealing the Enforcement Order to avoid its' [sic] obligation to close and despite the APA's requirement that Defendants cooperate to render it a final, nonappealable order; and (i) filing meritless and frivolous Notices of Appeal." Compl. at ¶100.

This activity is also not specifically prohibited by the APA. Indeed, Plaintiffs tacitly acknowledge that this alleged activity is not specifically prohibited by the APA by including these same allegations in their claim for breach of the "implied" covenant. Compl. at ¶107.

Because this activity is all covered by the litigation privilege, these breaches should be stricken for this additional reason.

4. Plaintiffs' Claim for Breach of the Implied Covenant Fails for Multiple Reasons.

Plaintiffs' claim for tortious breach of the implied covenant of good faith should be stricken because it is both (1) not a cognizable claim and (2) the alleged breaches are either covered by its breach of contract claim or covered by the litigation privilege.

a. Plaintiff's Claim or Tortious Breach is Not a Cognizable Claim.

Plaintiffs' third cause of action for "Tortious Breach of Contract (Breach of the Implied Covenant of Good Faith and Fair Dealing" is not a cognizable claim under California law and must be stricken.

It is well known that in California, a "person may not ordinarily recover in tort for the breach of duties that merely restate contractual obligations." *Stop Loss Ins. Brokers, Inc. v. Brown & Toland Medical Group*, 143 Cal. App. 4th 1036, 1041 (2006). For decades, the California Supreme Court has recognized that there is no such claim as "tortious breach of contract." *See Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 514 (1994) ("One contracting party owes no general tort duty to another not to interfere with performance of the contract; its duty is simply to perform the contract according to its terms."). For that reason, the law *does not recognize* a claim for "tortious breach of the implied covenant of good faith and fair dealing" in arms-length transactions such at the one at issue here. *See Pension Tr. Fund for Operating Engineers v. Fed. Ins. Co.*, 307 F.3d 944, 955 (9th Cir. 2002); *Denholm v. Houghton Mifflin Co.*, 912 F.2d 357, 361 (9th Cir. 1990). Under California law, "no cause of action for the tortious breach of the implied covenant of good faith and fair dealing can arise unless the parties are in a special relationship with fiduciary characteristics. Thus, the implied covenant tort is not available to parties of an ordinary commercial transaction where the parties deal at arms' length." *Pension Tr. Fund for Operating Engineers*, 307 F.3d at 955 (internal citations omitted); *see also*

Velazquez v. GMAC Mortg. Corp., 605 F. Supp. 2d 1049, 1072 (C.D. Cal. 2008) (dismissing claim for "tortious breach of the implied covenant of good faith and fair dealing" and recognizing that "*tort* recovery for breach of the covenant … is available only in limited circumstances, generally involving a special relationship between contracting parties.") (internal citation omitted, emphasis in original); *California Joint Powers Ins. Auth. v. Munich Reinsurance Am., Inc.*, 2008 WL 1885754, at *2 (C.D. Cal. Apr. 21, 2008) ("Because the covenant of good faith and fair dealing essentially is a contract term that aims to effectuate the contractual intentions of the parties, compensation for its breach has almost always been limited to contract rather than tort remedies.")

Plaintiffs have not (because they cannot) alleged that the parties had any "special relationship," such as that of an insurer and insured or fiduciary and beneficiary, that would permit them to assert a claim for tortious breach of the duty of good faith and fair dealing. As this Court has already held:

> ***Arm's Length Transaction***. The APA and other documents and instruments (the "Transaction Documents") related to and connected with this transaction (the "Transaction") and the consummation thereof were negotiated and entered into by the Debtors and Strategic Global Management, Inc. ("SGM"), as Purchaser under the APA without collusion, in good faith ***and through an arm's length bargaining process***. RJN Ex. B.

In sum, Plaintiffs' "tortious breach" claim is nothing but an impermissible attempt to "tortify" its breach of contract claim in a futile attempt to plead entitlement to punitive damages and must be stricken.

b. Plaintiff's Allegation of Breach of the Implied Covenant are Protected by the Litigation Privilege.

Where, as here, a claim for breach of the implied covenant of good faith and fair dealing merely reiterates the cause of action for breach of contract; it is legally superfluous and should be dismissed. *See Careau & Co. v. Security Pacific Business Credit, Inc*. 222 Cal. App. 3d 1371, 1394–95 (1990); *Wilson v. Gateway, Inc*., 2010 WL 11520532, at *3 (C.D. Cal. Jan. 25, 2010).

Plaintiffs' allegations of breach of the implied covenant include:

(a) entering the APA with no intention to perform their obligations

> thereunder;(b) failing to consummate and close the Sale transaction in accordance with the APA; (c) failing to have funds available to close the Sale at the Purchase Price set forth in the APA; (d) attempting to coerce Plaintiffs to engage in a re-trade; (e) failing to cooperate with Plaintiffs and move with alacrity towards closing the SGM Sale; (f) making unfounded and untimely assertions of alleged Material Adverse Effects; (g) asserting entitlement to an "Evaluation Period" following entry of the Enforcement Order, Section 8.6 Order and Closing Order; (h) filing meritless and frivolous Notices of Appeal; and (i) failing to respond to Plaintiffs inquiries regarding SGM's intent and financial ability to perform the APA.

Compl. ¶ 107.

The only allegations of breach of the implied covenant that are arguably not covered by the litigation privileged activity discussed above include the allegations in subparts (b) and (c) above -- *i.e.,* not closing the transaction and not having the necessary funds. Both of these relate to SGM's alleged failure to comply with the actual terms of the APA. Revealingly, these are Plaintiffs' first two allegations of breach in Plaintiffs' breach of contract claim. Compl. at ¶100. Because all of the remaining allegations are covered by the litigation privilege, and these two remaining allegations are covered by the breach of contract claim, this claim should be dismissed for this additional reason.

5. Plaintiffs' Claims Against the Non-SGM Defendants Also Fail Because Plaintiffs' Cannot Establish Alter-Ego Liability.

To establish alter-ego liability under California law, a plaintiff must establish: (1) that there is "such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist" and (2) that there will be an "inequitable result if the acts in question are treated as those of the corporation alone." *Gerritsen v. Warner Bros. Entm't Inc.,* 116 F. Supp. 3d 1104, 1136 (C.D. Cal. 2015). Plaintiffs cannot establish either element against any of the Non-SGM Defendants. We begin with the second element.

a. Plaintiffs Cannot Use Alter-Ego As a Substitute for Negotiating Contractual Guarantees with Known Related Entities.

To prove the second element, "a plaintiff must plead facts sufficient to demonstrate that 'conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form.'" *Tatung Co., Ltd. v. Shu Tze Hsu*, 217 F. Supp. 3d 1138, 1176 (C.D. Cal. 2016). A plaintiff cannot invoke the alter-ego doctrine when the plaintiff had knowledge of the existence of the entity defendant's principal but nevertheless decided to contract solely with the defendants instead of or in addition to the principal. *See Lynch v. McDonald*, 155 Cal. 704 (1909); *see also Finley v. Union Joint Stock Land Bank of Detroit*, 281 Mich. 214, 221–22 (1937) ("A claimant of the subsidiary corporation cannot be said to have been affected by the parent's use of the subsidiary as a mere instrumentality, if with knowledge of all the facts at the time he entered into the transaction with the subsidiary, he accepted or approved the relationship between the two corporations."); *Brunswick Corp. v. Waxman*, 459 F. Supp. 1222, 1231–32 (E.D.N.Y. 1978), aff'd, 599 F.2d 34 (2d Cir. 1979) (holding that the plaintiff was barred from piercing the corporate veil of a no-asset special purpose entity established solely to acquire trade equipment, as the plaintiff was aware of that fact).

The California Supreme Court's ruling in *Lynch v. McDonald* is instructive. In *Lynch*, the plaintiff entered into a services agreement to serve as the defendant mining company's attorney and expert. *See id*. at 705. The company's president executed the services agreement on behalf of the corporation. *See id*. When a dispute arose between the parties, the plaintiff sued the company and brought an alter-ego claim against the president, claiming that the president owned nearly all of the capital stock in the company and controlled the company's policies. *See id*. The California Supreme Court rejected the plaintiff's alter-ego theory because the plaintiff was thoroughly familiar with all the facts concerning the president's relation to the company. *See id*. at 706. The court reasoned that "[i]f this was an action by a stranger to the facts, who had been injured by ignorance of [the president's] holding of nearly all of the stock of the company, there might by some force in [the plaintiff's] position, and some necessity for the application of the [alter ego doctrine]." *Id*. The court continued that "if [the plaintiff] was content to act under a contract which [the president] refused to sign except as an officer of the company, he cannot complain that [the president], who was not a party signatory to the instrument, is not bound." *Id*.

The Court's ruling in *Brunswick Corp. v. Waxman* further illustrates this principle. In that case, the Waxmans were general partners interested in expanding their bowling operations and contacted Brunswick Corporation to discuss the purchase of bowling equipment. *See Brunswick Corp. v. Waxman*, 459 F. Supp. at 1224. The Waxmans indicated that they were interested in making the bowling equipment purchases through a no-asset special entity that would act as the purchaser and obligor on any conditional sale agreements. *Id*. Brunswick agreed, and the Waxmans formed the Waxman Construction Corp. ("Construction Corp."), a no-asset corporation to act as signatory on the sale contracts. *See id*. Recognizing that Construction Corp. did not have assets, Brunswick performed due diligence on its principals and considered the location, population, and presence of competitors to the proposed bowling alleys to determine the success of the bowling alleys. *See id*. Based on their due diligence, Brunswick was aware that the Waxmans were successful businessmen who had successfully operated other bowling lanes, and knowingly accepted the no-asset Construction Corp. as the obligor on a series of conditional sale contracts. *See id*.

When Construction Corp. defaulted on its obligations, Brunswick sued the Waxmans for alter ego liability claiming that the Waxmans operated Brunswick's equipment in their individual capacities in complete disregard of corporate formalities and have rendered themselves personally liable for the entities' obligations. *See id.* at 1228. The Waxmans argued, *inter alia*, that Brunswick was fully aware that Construction Corp. lacked capitalization, and with that knowledge consented to contracting solely with that entity. *See id.* at 1231-32. Although Brunswick was able to establish that the Waxmans and Construction Corp. did not follow corporate formalities, the court agreed with the Waxmans and dismissed Brunswick's complaint. *See id.* at 1231-32, 1234. The court relied on the long standing rule that "[t]he plaintiff was not wronged by the fact that the corporation was organized with a trifling capital and could not live except upon borrowed money; nor by the fact that the lenders insisted upon security. [The plaintiff] knew the essential facts and accepted the situation." *Id.* at 1232 (*quoting Hanson v. Bradley*, 298 Mass. 371, 10 N.E.2d 259, 264 (S.J.C.1937)). The court reasoned that undercapitalization might, under some circumstances indicate that the corporate form was being used to mislead creditors and should be pierced, Brunswick had full knowledge of the lack of capitalization, and consented to it. *See id*. It held that "[w]hen one extends credit to a corporation in the large amounts involved in this case and relies upon that corporation, it is reasonable to assume that he will investigate the corporation's capitalization, its assets and its operations, and that his contract is made on this basis and not on the individual credit of the dominant stockholders." *Id*.

The district court's dismissal was affirmed by the United States Court of Appeals, Second Circuit, which held: "[u]nder these circumstances Brunswick obtained precisely what it bargained for, and it did not bargain for or contemplate the individual liability of the Waxmans which it now seeks to enforce. To pierce the corporate veil here would not in our view accomplish justice or equity but would in fact thwart that end. We therefore refuse to disregard the corporate entity in this case. The creation of the dummy corporation under these circumstances to eliminate personal responsibility should be respected." *Brunswick Corp. v. Waxman*, 599 F.2d 34, 36 (2d Cir. 1979).

The facts presented in this case are strikingly similar to those in *Lynch* and *Brunswick*. Plaintiffs, in conjunction with their multiple attorneys and advisors, including Cain Brothers ("Cain"), reviewed, investigated, and ultimately approved SGM's offer to be the stalking-horse bidder of the Plaintiffs' assets. *See* Complaint ¶ 40. The deal was valued at $610,000,000. *See id*. SGM's offer letter, dated August 13, 2018, was one of the documents that Plaintiffs purportedly relied on in entering into the APA. *See id*. at ¶¶ 40-41. Crucially, that document specified that SGM is a "venture company used to acquire assets and businesses, through companies which are affiliated or associated (through common ownership and otherwise) with SGM, but which are not subsidiaries of SGM." *Id*. at ¶ 41. It was clear to Plaintiffs from SGM's initial offer letter that SGM would serve as a separate entity used to purchase the assets.

As part of the lengthy due diligence process with Plaintiffs and their advisors were, among other things, provided a letter from Dr. Chaudhuri's bank supporting Dr. Chaudhuri's available assets. *See id*. at ¶ 42. Later that month, Plaintiffs, and Plaintiffs' advisors, met with representatives of SGM and the Non-SGM Defendants, including Dr. Chaudhuri, to discuss the sale of the Plaintiffs' assets. *See id*. at ¶ 43. At that juncture, Plaintiffs were thoroughly aware of facts concerning SGM's relationship to Dr. Chaudhuri and the other Non-SGM Defendants.

Relying on their multiple advisors, and having full awareness of the facts concerning SGM's relationship to the Non-SGM Defendants, Plaintiffs chose to contract solely with SGM. *See id*. at ¶¶ 43, 44.

Just like the plaintiffs in *Lynch* and *Brunswick*, the Plaintiffs were thoroughly aware of SGM's relationship to the Non-SGM Defendants, particularly the fact that SGM was a special purpose entity established for the acquisition of assets. Plaintiffs were not strangers to the facts, but rather well informed of all of the facts regarding SGM's relationship to the Non-SGM Defendants.

Plaintiffs were also not left without recourse. Although they did not negotiate for contractual guarantees, SGM made a deposit of $30 million that Plaintiffs could keep if SGM defaulted on an obligation to close the transaction. Plaintiffs likely believed the deposit gave them adequate security. In short, Plaintiffs chose not to exhaust bargaining leverage to obtain additional guarantees from other parties. They cannot now attempt to obtain that same benefit through concocted allegations of alter-ego.

Plaintiffs' decision to contract solely with SGM, despite their thorough understanding of the nature of the relationship with the Non-SGM Defendants, bars them from complaining that the Non-SGM Defendants, non-signatories to the APA, are not bound. Just like the plaintiff in *Brunswick*, Plaintiffs here obtained precisely what they bargained for, and did not bargain for or contemplate the liability of the Non-SGM Defendants. Piercing the corporate veil in these circumstances would thwart the alter ego doctrine's goal of promoting justice and equity. Thus, Plaintiffs' claims against the Non-SGM Defendants should be stricken on this additional basis.

b. Plaintiffs Have Also Not Alleged Sufficient Facts to Support Their Alter-Ego Claims Against the Non-SGM Defendants.

"[T]he corporate form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require." *Eleanor Licensing LLC v. Classic Recreations LLC*, 21 Cal. App. 5th 599, 615 (2018). "Conclusory allegations of "alter ego" status are insufficient to state a claim. Rather, a plaintiff must allege specifically . . . the elements of alter ego liability, as well as facts supporting [those elements]." *Neilson v. Union Bank of Cal., N.A.*, 290 F. Supp. 2d

1101, 1116 (C.D. Cal. 2003).

In paragraphs 18-22 of the Complaint, Plaintiffs ask the Court to disregard SGM's corporate existence because it is alleged that SGM is the alter ego of the "other defendants". Such a claim requires allegations demonstrating that SGM has no legitimate separate existence – that it is are merely an instrumentality for the Non-SGM Defendants – and that inequity will result if its corporate form is recognized. *See id*. at 1117.

Plaintiffs, however, have not identified any facts to support their claim. Plaintiffs offer only a "formulaic recitation" of each factor that courts typically consider in analyzing a request to pierce the corporate veil. They do not provide any meaningful factual allegations that would "allow[] the court to draw the reasonable inference" that the Non-SGM Defendants actually are the mere instrumentality of SGM and that inequity will result if SGM's corporate existence is recognized. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

For example, Plaintiffs allege, on information and belief, as to Dr. Chaudhuri and "KPC", the following conclusions:

> "[Dr. Chaudhuri and KPC] (1) controlled the business and affairs of SGM, including any and all of their affiliates; (2) disregarded legal formalities and failed to maintain arm's length relationships among the corporate entities; (3) inadequately capitalized SGM; (4) used the same office or business location and employed the same employees for the corporate entities; (5) held Chaudhuri himself out as personally liable for the debts of the corporate entities; (6) used the corporate entities as a mere shells, instrumentalities or conduits for Chaudhuri and/or his individual businesses; (7) manipulated the assets and liabilities between the corporate entities so as to concentrate the assets in one and the liabilities in another; (8) used corporate entities to conceal their ownership, management and financial interests and/or personal business activities; and/or (9) used the corporate entities to shield against personal obligations, and in particular the obligations as alleged in this Complaint."

Compl. ¶ 20.

None of the above conclusions are sufficient to create an inference that SGM is the instrumentality of the other defendants. First, Plaintiffs' ubiquitous use of "defendants" makes it impossible to understand the nature of Plaintiffs' allegations. Do Plaintiffs contend the corporate entities are alter egos of Dr. Chaudhuri, SGM, or perhaps the other defendants? Relatedly, the

Plaintiffs use of "and/or" makes it impossible to understand which of the conclusory acts were committed and by which defendants. Plaintiffs' Complaint provides no answers to these issues and thus fails to put the Non-SGM Defendants on notice of the claims against them. By failing to do so, Plaintiffs' alter ego allegations violate the most basic principle underpinning a notice pleading – to provide notice of the claims against each particular defendant.

Plaintiffs' use of soundbites taken from various websites and meetings also do not buttress their alter ego claims against Non-SGM Defendants. The statements merely show that there is a relationship, albeit an arms-length relationship, between the defendants. A relationship is not enough to allege alter-ego. Rather, Plaintiffs must allege facts to establish that there is "such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist." *Mesler v. Bragg Mgmt. Co.*, 39 Cal. 3d 290, 300 (1985). No facts have been alleged that compel a finding that the separate personalities between SGM and the Non-SGM Defendants somehow no longer exist.

To the contrary, Plaintiffs' cites at least one example where an alter ego claim *cannot* exist. Specifically, Plaintiffs admit, in paragraph 41 of their Complaint that Non-SGM Defendant, KPC Healthcare, has been sold to an Employee Stock Ownership Plan that is not owned by Chaudhuri of SGM. *See* Compl. ¶ 41. By the inclusion of this allegation, Plaintiffs acknowledge that KPC Healthcare is not owned by SGM or any of the other defendants and cannot be SGM's alter ego.

Because Plaintiffs have not sufficiently alleged alter-ego against the non-SGM Defendants, Plaintiffs should strike all of the claims against them for this additional reason. Plaintiffs' claims against KPC HealthCare should be stricken for the additional reason that Plaintiffs acknowledge in the Complaint that it is not owned by SGM or Chaudhuri.

c. Plaintiffs' Generic Agency and Conspiracy Allegations Do Not Save Their Claims Against the Non-SGM Defendants.

Plaintiffs' complaint also includes boilerplate agency and conspiracy allegations. However, as a matter of law, these claims cannot make the non-SGM defendants liable for SGM's alleged breach of the APA. *See Automatic Poultry Feeder Co. v. Wedel*, 213 Cal. App. 2d

509, 518 (1963) (explaining that agents are not liable for contracts for a disclosed principal); *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503, 510 (1994) (explaining conspiracy only applies to torts). Plaintiffs have also not alleged any facts establishing how any of the non-SGM Defendants somehow assisted or conspired in SGM's alleged false promise. These alternative theories thus cannot justify any claims against the non-SGM parties.

IV. CONCLUSION

For the reasons discussed above, Defendants request that the Court strike each claim asserted by Plaintiffs and enter judgment in favor of Defendants.

Dated: February 19, 2020

BARNES &THORNBURG LLP

By:________________________

Kevin D. Rising
L. Rachel Lerman
Joel R. Meyer
Counsel for Strategic Global Management, Inc.; Kali P., Chaudhuri, M.D.; KPC Healthcare Holdings, Inc.; KPC Healthcare, Inc., KPC Global Management, LLC

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is 10250 Constellation Boulevard, Suite 1700, Los Angeles, CA 90067.

A true and correct copy of the foregoing document entitled **DEFENDANTS' NOTICE OF MOTION AND SPECIAL MOTION TO STRIKE PLAINTIFF'S COMPLAINT PURSUANT TO CAL. CIV. PROC. CODE § 425.16; MEMORANDUM OF POINTS AND AUTHORITIES** 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. <u>TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)</u>: 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 19, 2020**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- James Cornell Behrens jbehrens@milbank.com, gbray@milbank.com;mshinderman@milbank.com;dodonnell@milbank.com;jbrewster@milbank.com;JWeber@milbank.com
- Gary E Klausner gek@lnbyb.com
- Jeffrey S Kwong jsk@lnbyb.com, jsk@ecf.inforuptcy.com
- Samuel R Maizel samuel.maizel@dentons.com, alicia.aguilar@dentons.com;docket.general.lit.LOS@dentons.com;tania.moyron@dentons.com;kathryn.howard@dentons.com;joan.mack@dentons.com;derry.kalve@dentons.com
- Tania M Moyron tania.moyron@dentons.com, chris.omeara@dentons.com;nick.koffroth@dentons.com;Sonia.martin@dentons.com;Isabella.hsu@dentons.com;lee.whidden@dentons.com;Jacqueline.whipple@dentons.com
- Kyrsten Skogstad kskogstad@calnurses.org, rcraven@calnurses.org
- United States Trustee (LA) ustpregion16.la.ecf@usdoj.gov

2. <u>SERVED BY UNITED STATES MAIL</u>: On **February 19, 2020**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge <u>will be completed</u> no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. <u>SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL</u> <u>(state method for each person or entity served)</u>: Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **February 19, 2020**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge <u>will be completed</u> no later than 24 hours after the document is filed.

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

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

February 19, 2020	Lisa Masse	*/s/ Lisa Masse*
Date	*Type Name*	*Signature*