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KPC Global Management, LLC

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

CHAPTER 11

Lead Chapter 11 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 MOTION TO DISMISS PLAINTIFFS' COMPLAINT [Fed. R. Civ. Proc. 12(b)(1) & 12(b)(6)]

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

HOLDINGS, LLC, a California limited liability company;

Plaintiffs,

v.

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

Defendants.

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 dismissing Plaintiffs Verity Health System of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center, and Verity Holdings, LLC's ("Plaintiffs") Complaint in the above-referenced adversary proceeding.

PLEASE TAKE FURTHER NOTICE that this Motion is made pursuant to Federal Rule of Civil Procedure Rules 12(b)(1) and 12(b)(6), made applicable herein by Rule 7012 of the Federal Rules of Bankruptcy Procedure, on the grounds that: (1) the Court has been divested of jurisdiction due to SGM's pending appeals; (2) the Adversary Proceeding is a non-core matter & the Non-SGM Defendants have not consented to jurisdiction; (3) each of Plaintiffs' causes of action fail to state a claim as a matter of law because Plaintiffs did not satisfy APA Section 8.7; (4) Plaintiffs' second cause of action for fraud fails as a matter of law because: (a) the alleged fraudulent representation is protected by the litigation privilege and (b) Plaintiffs' specific allegations do not support fraud; (5) 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 in this arm's-length transaction; (6) Plaintiffs' alter-ego claims fail as a matter of law because: (a) Plaintiffs cannot use alter-ego as a substitute for negotiating contractual guarantees with known related entities, (b) Plaintiffs have not alleged sufficient facts to support their alter-ego claims against the Non-SGM Defendants, and (c) Plaintiffs concede facts necessarily defeating their alter-ego claims against KPC healthcare; and (7) Plaintiffs' boilerplate "agency, aiding and abetting, and conspiracy" allegations fail as a matter of law.

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: */s/ Gary E. Klausner*
Gary E. Klausner
Counsel for Strategic Global Management, Inc.; Kali P., Chaudhuri, M.D.; KPC Healthcare Holdings, Inc.; KPC Healthcare, Inc., KPC Global Management, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Other State Cases

Federal Statutes

California Statutes

Other Authorities

MEMORANDUM OF POINTS AND AUTHORITIES

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") submit this motion to dismiss the Adversary Proceedings, Case No. 2:20-ap-01001-ER, filed by Verity Health System of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center, and Verity Holdings, LLC ("Plaintiffs").[1]

I. INTRODUCTION

As explained in Defendants' concurrently filed Anti-SLAPP motion, ever since SGM began to assert that Plaintiffs had not complied with their obligations under the parties' Asset Purchase Agreement ("APA"), Plaintiffs have sought to punish SGM for daring to assert its rights. In furtherance of that scorched-earth punishment campaign, Plaintiffs filed a massively overreaching Adversary Complaint against not only SGM, but Kali P. Chaudhuri, M.D. individually, and presumably every other entity that Plaintiffs could find with the letters "KPC" in its name. In doing so, Plaintiffs reveal their true intent, to extract maximum retribution against SGM and Dr. Chaudhuri for their erroneously perceived slight. Plaintiffs' claims all fail as a matter of law.

Plaintiffs' Complaint must be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1), which is incorporated into Bankruptcy Rule 7012(b)(1), for two independent reasons. First, the Complaint must be dismissed because this Court has been divested of subject matter jurisdiction by the concurrently pending Appeals of the Court's Orders of November 14, 18, and 27, 2019. The contents of these Orders are intertwined with the facts at issue in this adversary proceeding and are certainly not "separate from, or collateral to, the matter involved in the

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[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.

appeal." Second, the Complaint must also be dismissed as to the Non-SGM Defendants because they have not consented to the Court's jurisdiction. The Non-SGM entities have nothing to do with this transaction – they are not parties to the APA, have not filed proofs of claim in the Plaintiffs' bankruptcy cases, have not participated in the Chapter 11 case or in any manner consented to the jurisdiction of the Bankruptcy Court, and have not waived their Seventh Amendment right to a jury trial. To the contrary, Plaintiffs knew of the existence of these entities at the time they entered into the APA with SGM and affirmatively opted to contract *solely* with SGM – a fact which, as explained below, also necessarily defeats Plaintiffs' specious alter-ego allegations.

But the Court's lack of subject matter jurisdiction is not the only fatal flaw with Plaintiffs' Complaint. Plaintiffs' Complaint must also be dismissed under Federal Rule of Civil Procedure 12(b)(6) because none of Plaintiffs' three causes of action state a claim as a matter of law.

At the outset, all of Plaintiffs' claims fail as a matter of law because the very facts pled in Plaintiffs' own Complaint indisputably establish that Plaintiffs did not comply with APA Section 8.7. Because they did not satisfy all 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. All of Plaintiffs' claims should be dismissed for this reason alone.

Plaintiffs' second cause of action for promissory fraud also fails for two additional reasons. First, Defendants' alleged misrepresentations were made during the course of the bankruptcy proceeding, are covered by the litigation privilege (Cal. Civ. Code. §47(b)), and cannot give rise to liability as a matter of law. Second, even if the alleged false promise was not privileged (it is), Plaintiffs' false promise claim also fails because Plaintiffs' allegations explicitly negate their 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 definitively 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 merely had the *opinion* they would never be *obligated* to pay, as opposed to a belief that they would be

obligated and *intention* to breach that obligation. Because they never anticipated the obligation arising, Defendants could not have the fraudulent intent necessary for fraud.

Plaintiffs' third cause of action 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 also fail for an independent reason – Plaintiffs' alter-ego allegations are legally defective. It is well-settled that a plaintiff may not 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. As explained below, Plaintiffs' boilerplate and conclusory conspiracy and agency allegations do not save their faulty alter-ego claims.

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

II. PLAINTIFFS' ALLEGATIONS AND PROCEDURAL HISTORY

A. SGM's Offer to Purchase 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 substantially all 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 related 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, Plaintiffs 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 sell 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
- Plaintiffs had to reach agreements with CMS and DHCS that would allow the transfer of the Medicare and Medi-Cal provider agreements free and clear of all known and unknown potential future claims. APA § 8.7.

When it entered into the contract, SGM 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 the APA

Plaintiffs contend that Defendants believed that 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. The Court Rejects the 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; 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). Defendants appealed the Court's November 14, 2019 Order to the District Court.

See RJN Ex. Q; Compl. ¶ 93.

On November 18, 2019, the Court issued an order [RJN Ex. K] and related memorandum [RJN Ex. J] which Plaintiffs state held: "The Debtors have complied with their obligation to obtain a final, nonappealable Supplemental Sale Order. Consequently, SGM is now obligated to promptly close the SGM Sale, provided that all other conditions to closing have been satisfied." Compl. ¶ 83. Defendants appealed the Court's November 18, 2019 Order to the District Court. *See* RJN Ex. R; Compl. ¶ 93.

E. Plaintiffs' Alleged Attempt to Satisfy APA Section 8.7

Section 8.7 of the APA obligated Plaintiffs to transfer their Medicare and Medi-Cal provider agreements to SGM pursuant to "settlement agreements" with CMS (Medicare) and DHCS (Medi-Cal). 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, Plaintiffs had accumulated substantial liabilities to DHCS, which administers Medi-Cal in California, for unpaid Hospital Quality Assurance Fees ("HQA Fees"), and for Medi-Cal fee-for-service overpayments. On March 22, 2019, DHCS filed an objection to the proposed sale to SGM, arguing that the Medi-Cal provider agreements between it and 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). 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. 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 provider agreements are non-executory contracts.

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. 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. 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 Plaintiffs' 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 Plaintiffs 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 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 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 against the Debtors and SGM 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, Plaintiffs argued (notwithstanding: (1) Section 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 noticed a closing of the transaction for December 5, 2019. Compl. ¶ 85.

On November 27, 2019, the Court entered an Order and accompanying memorandum of decision that Plaintiffs contend held: (1) Plaintiffs' November 20 notice of closing was valid; and (2) all conditions to closing had been satisfied by Plaintiffs as of November 19, 2019, such that SGM was "obligated" to close the sale on December 5, 2019. RJN Ex. T, U. Defendants appealed the Court's November 27, 2019 Order to the District Court. *See* RJN Ex. S.

G. Plaintiffs' Claims

Plaintiffs filed this Adversary Proceeding 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.

Compl. ¶ 100.

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. ¶ 107.

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

/ / /

III. THE COURT LACKS SUBJECT MATTER JURISDICTION OVER THE ADVERSARY PROCEEDINGS.

A. The Court Has Been Divested of Jurisdiction Due to SGM's Pending Appeals.

The Court should dismiss Plaintiffs' Complaint because it lacks subject matter jurisdiction over the proceedings in light of SGM's currently pending Appeals. The pending Appeals divest this Court of jurisdiction over the Adversary Proceeding, because it raises claims related to the rulings set forth in this Court's November 14, November 18, and November 27 Orders, all of which are pending appeal in the District Court. (*See, e.g.* Compl. ¶¶ 74-76; 83-95; 100; 107).

As Plaintiffs concede,[2] the Ninth Circuit has held that where, as here, the subject matter of an appeal covers the same ground as the Adversary Proceedings, the Court is "'automatically divested of its authority to proceed with trial pending appeal.'" *Rodriguez v. Cty. of Los Angeles*, 891 F.3d 776, 791 (9th Cir. 2018) (quoting *Chuman v. Wright*, 960 F.2d 104, 105 (9th Cir. 1992). This is a *mandatory* claims processing rule that *automatically* divests the Court of jurisdiction. *Id.*[3]

To be clear, the Orders on appeal need not be "dispositive" of the issues in the adversary proceeding to implicate the mandatory divestiture rule. The lower court is divested of jurisdiction to control *any* aspects of the proceedings "*involved* in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982) (emphasis added). In short, the Court lacks subject matter jurisdiction to determine any issues involved in the appeal unless it is affirmatively shown that such issues are "separate from, or collateral to, the matter involved in the appeal…." *Ashker v. Cate*, 2019 WL 1558932, at *3 (N.D. Cal. Apr. 10, 2019).

Plaintiffs have not shown, because they cannot show that the issues involved in the appeal are "separate from or collateral to" the Adversary Proceedings. To the contrary, Plaintiffs'

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[2] Plaintiffs relied heavily on *Rodriguez v. Cty. of Los Angeles*, 891 F.3d 776, 791 (9th Cir. 2018) in their opposition to SGM's motion to stay the adversary proceedings.

[3] This mandatory divestiture rule is subject to only two exceptions – where the lower court has certified the appeal as frivolous or where the litigant has waived its right to a stay. *Rodriguez v. Cty. of Los Angeles*, 891 F.3d 776, 791 (9th Cir. 2018). Neither of these limited exceptions are applicable here.

Complaint states upfront that it seeks damages because "Defendants … violated the Bankruptcy Court's orders requiring them to close the sale…." Compl. at p. 3. Indeed, *Plaintiffs' breach of contract and tortious breach claims are both premised, inter alia, on Defendants' "filing meritless and frivolous Notice of Appeal."* Compl. ¶¶ 100; 107. The Complaint is replete with references to issues addressed in the Orders on appeal. Compl. ¶¶ 63-65; 70-76; 77; 84-85; 88-91; 100; 107. And while the Court has held that "Debtors cannot rely *solely* upon the Material Adverse Effect Order to support their allegation that SGM was obligated to close as of December 5, 2019" [Dkt. No. 29], the fact that that Order is even *potentially* applicable to Plaintiffs' claims at issue in this Adversary Proceeding evidences that it is neither "separate from" or "collateral to" the Adversary Proceedings. As such, the Court lacks subject matter jurisdiction to adjudicate this case while the Orders are on Appeal. Plaintiffs' Complaint should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(1).

B. The Adversary Proceedings Are a Non-Core Matter & the Non-SGM Defendants Have Not Consented to Jurisdiction.

The Adversary Proceedings are a non-core matter because Plaintiffs' claims "do not depend on bankruptcy laws for their existence and … could proceed in another court….'" *Sec. Farms v. Int'l Bhd. of Teamsters, Chauffers, Warehousemen & Helpers*, 124 F.3d 999, 1008 (9th Cir. 1997). Plaintiffs' Complaint exclusively contains state law claims for breach of contract, fraud, and "tortious breach of contract (implied covenant of good faith and fair dealing)" relating to SGM's alleged breach of the APA. Such claims are inherently "non-core." *See In re Gurga*, 176 B.R. 196, 199 (9th Cir. BAP 1994) (explaining that when the underlying action is a breach of contract and the proceedings would involve the "turnover" of disputed funds, the action is non-core). It is also undisputed that the Non-SGM Defendants are not parties to the APA, have not filed proofs of claim in the Plaintiffs' bankruptcy cases, have not participated in the Chapter 11 case or in any manner consented to the jurisdiction of the Bankruptcy Court, and have not waived their Seventh Amendment right to a jury trial.

As such, the Non-SGM Defendants are not subject to the Bankruptcy Court's jurisdiction. *In re Miller*, 2007 WL 9776702, at *2–3 (S.D. Cal. Jan. 22, 2007) ("claims against third parties

[in adversary proceeding] [do] not fall under the bankruptcy court's subject matter jurisdiction"). The bankruptcy court may not exercise jurisdiction over the non-SGM defendants as a matter of law. *See Stern v. Marshall*, 564 U.S. 462, 503 (2011) ("The Bankruptcy Court below lacked the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim."); *Wellness Intern. Network, Ltd. v Sharif*, 575 U.S. 665, 135 S. Ct. 1932 (2015) (Bankruptcy Court may constitutionally adjudicate a non-core matter only with the consent of the parties); *In re Palomar Elec. Supply, Inc.*, 138 B.R. 959, 961 (S.D. Cal. 1992) ("The court finds that the defendant has not waived its right to a jury trial and has made a demand for a jury trial as to the non-core causes of action. As a result, causes of action seven through nine cannot be tried in the bankruptcy court…."); *In re EPD Inv. Co., LLC*, 594 B.R. 423, 426 (C.D. Cal. 2018) ("Kirkland has a right to a jury trial . . . . Because he has demanded a jury trial, has not filed a proof of claim against the estate, and has not consented to a jury trial in the bankruptcy court, he has a right to a jury trial conducted by the [District] Court.").

IV. PLAINTIFFS' COMPLAINT FAILS TO STATE A CLAIM AS A MATTER OF LAW

A. Plaintiffs' Claims All Fail As A Matter of Law Because Plaintiffs Did Not Satisfy APA Section 8.7.

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 as of November 19, 2019, when they represented to SGM that they had satisfied all conditions to closing and demanded that SGM close on December 5, 2019. If Plaintiffs did not satisfy the conditions to close as of November 19, 2019, when they represented to SGM that they had satisfied all conditions to closing and demanded that SGM close on December 5, 2019 and Plaintiffs cannot possibly establish that any of the harm they have suffered was in anyway attributable to SGM.[4] Of course, Plaintiffs have the burden to establish that all conditions

[4] 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).

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 event transpired.").

Here, Plaintiffs cannot establish that they satisfied the condition stated in APA Section 8.7. 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 as of November 19, 2019, contrary to their representation to SGM that they had done so, 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 they contend 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.

1. 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 they unilaterally decide is as good as a Settlement Agreement. SGM bargained for a Settlement Agreement, signed by DHCS, 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.

2. 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 [RJN Ex. H] referenced in the Complaint – expressly stated that the Court was reserving the issue of DHCS's recoupment rights against the Debtor and SGM for future adjudication. Accordingly, the risk of having the DHCS recoup from SGM the tens of millions of dollars of its claims against Plaintiffs, was the opposite of the full release and discharge required by Section 8.7.

On March 22, 2019, DHCS filed an objection with the Bankruptcy Court to 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. Thus, according to DHCS, the Provider Agreements associated with each Hospital could not be transferred to SGM unless and until

Plaintiffs 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.

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. 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 Plaintiffs' Medi-Cal Provider Agreements. RJN Ex. C. 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

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

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 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. RJN Ex. H (Emphasis added.)

DHCS appealed from the Court's October 11 Order. Thus, as of the entry of the Court's October 11 Order, Plaintiffs (1) had no "settlement agreement" with DHCS to satisfy the closing condition of Section 8.7, (2) the only court order permitting Plaintiffs 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 their 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.

3. Plaintiffs' Alleged November 22, 2019 Settlement Agreement With DHCS Does Not Save Plaintiffs.

Plaintiffs also allege that they 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 Plaintiffs' improper notice of closing

that they sent two days earlier on November 20. That said, Plaintiffs have admitted in prior Court proceedings and in open court that they did not have any such agreement with DHCS.

Indeed, at a Court hearing on November 26, 2019 and were still "negotiating". Plaintiffs cannot seriously argue that "a settlement in principle" which was still being "negotiated" 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. 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. [5]

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

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

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 their fraud theory.

1. 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

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[5] Defendants believe that Plaintiffs may now attempt to argue that Plaintiffs' December 9, 2019 settlement with DHCS somehow satisfies Section 8.7. Such an argument would fail for numerous reasons. First, a settlement agreement executed on December 9, 2019 proves that the Section 8.7 condition was unsatisfied on November 19, 2029, when Plaintiffs represented that all conditions to closing had been satisfied and, obviously, 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.

'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 fundamental adjunct to the right of access to judicial and quasi-judicial proceedings.'" *Id.* (quoting *Pettitt v. Levy*, 28 Cal. App. 3d 484, 490-491, 104 (1972)). To be protected, the communications just need to "have some connection or logical relation to the action." *Id.; see also Sacramento Brewing Co.*, 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, section 47(b) provides a complete defense to claims arising from protected speech, including claims of fraud. *Id.* (citing numerous supporting cases). This includes 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 thus immune from tort liability based

on the litigation privilege. The Court should thus strike Plaintiffs' fraud claim for this reason alone.

2. Plaintiffs' Allegations Do Not Support Fraud.

The elements of fraud are: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *Lazar v. Superior Court*, 12 Cal. 4th 631, 638 (1996) (quoting Witkin, Summary of Cal. Law (9th ed. 1988) Torts § 676)). 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 their claim that Defendants intended to breach the APA when SGM executed it. 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 intended 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 did *intended* to breach an alleged obligation to pay that price. As Plaintiffs allege, Defendants never even imagined the possibility

that they 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 not to 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 dismissed.

C. Plaintiffs' Claim for "Tortious Breach of Contract (Breach of the Implied Covenant of Good Faith and Fair Dealing)" Fails as A Matter of Law.

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 dismissed.

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); *Aas v. Superior Court*, 24 Cal.4th 627, 643 (2000) ("A person may not ordinarily recover in tort for the breach of duties that merely restate contractual obligations."). [6] For decades, the California Supreme Court has

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[6] For this reason, Plaintiffs' promissory fraud claim also violates California's economic loss rule. *JMP Sec. LLP v. Altair Nanotechnologies Inc., 880 F. Supp. 2d 1029, 1043 (N.D. Cal. 2012)* (dismissing the plaintiffs' promissory fraud claim under the economic loss rule because it "consist[ed] of nothing more than [defendants'] alleged failure to make good on its contractual promises."); *De Nora Water Tech., Inc. v. Nesicolaci*, 2017 WL 8110006, at *3 (C.D. Cal. Aug. 2, 2017) ("Counterclaimants attempt to take 'allegations underpinning a straightforward claim for breach of [an employment] contract and recast them as torts,' which 'consist of nothing more than [DNWT's] alleged failure to make good on its contractual promises.' []The economic loss rule bars such a claim under tort, unless Counterclaimants can point to conduct independent of DNWT's alleged breach of contract.") (internal citation omitted); *Darbeevision, Inc. v. C&A Mktg., Inc.*, 2018 WL 5880618, at *2 (C.D. Cal. Aug. 30, 2018) ("But the two inducing 'false promises' that Darbeevision cites are Defendants' statements that C&A would 'market and promote the product and ... purchase specified quantities of the product.' These promises are identical to C&A's duties under the contract, and the only allegation Darbeevision uses to show

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.") (the Hon. Dale S. Fischer, presiding).

Plaintiffs have not (because they cannot) alleged that the parties had any "special

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that the promises were 'fraudulent' is that C&A didn't perform them. As a result, Darbeevision hasn't sufficiently alleged that Defendants' committed a tort independent of the alleged breach of contract."); *Grand Fabrics Int'l Ltd. v. Melrose Textile*, Inc., 2018 WL 5880175, at *3 (C.D. Cal. Aug. 6, 2018) ("The assurances allegedly made by Plaintiff related to its duty under the contract, *i.e.*, that Plaintiff would perform its end of the bargain by sending compliant fabrics. To allow a fraud claim under these facts would allow a fraud claim to be filed every time a contract was allegedly breached.")

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 (emphasis added); *see also id.* ("the negotiation and execution of the APA and related Transaction Documents were conducted in good faith and constituted an arms' length transaction.").

The claim must be dismissed as a matter of law.[7]

D. Plaintiffs' Alter Ego Claims Must Be Dismissed.

To establish alter-ego liability under California law, a plaintiff must plead and prove: (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 satisfy either element against any of the Non-SGM Defendants. We begin with the second element.

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

To satisfy 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

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[7] Moreover, the claim should also be dismissed because it is duplicative of Plaintiffs' breach of contract and fraud claims. 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).

corporate form.'" *Tatung Co., Ltd. v. Shu Tze Hsu*, 217 F. Supp. 3d 1138, 1176 (C.D. Cal. 2016) (quoting *Stewart v. Screen Gems-EMI Music, Inc.*, 81 F. Supp. 3d 938, 963 (N.D. Cal. 2015)).

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 defendant 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. *Id*. at 705. The company's president executed the services agreement on behalf of the corporation. *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. *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. *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. *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 purpose 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. *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. *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. *Id.*

While Construction Corp. was the signatory and obligor on the conditional sale contracts, it did not operate the bowling alleys. *Id.* at 1225. Rather, the bowling alleys were operated by the Waxmans in their capacity as partners. *Id*. No rent was paid to Construction Corp. for the use of the equipment. *Id*. Instead, prior to each of Construction Corp.'s payments to Brunswick, the Waxmans would transfer the exact amount of the payment from their bank accounts to Construction Corp. to meet the installment. *Id*. Brunswick was able to establish that Construction Corp. did not follow corporate formalities. *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. *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. *Id*. at 1231-32. The court agreed and dismissed Brunswick's complaint. *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. *Id*. Further, the court reasoned that Brunswick was aware or otherwise on constructive notice that the bowling alleys were being operated by the Waxmans. *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* Compl. ¶ 40. The deal was valued at $610,000,000. *Id*. SGM's offer letter, dated August 13, 2018, was one of the documents that Plaintiffs purportedly relied on in entering into the APA. *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 special purpose acquisition 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 liquidity. *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. *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, including knowledge of Dr. Chaudhuri's net worth, Plaintiffs chose to contract solely with SGM. *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. Because the parties also agreed to limit the total amount of potential damages to $60 million, Plaintiffs likely they believed the deposit gave them sufficient security on what would be a total max recovery of $60 million. In short, they decided it was unnecessary to exhaust bargaining leverage to obtain guarantees from other parties.

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.

2. Plaintiffs Have 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); *see also In re Currency Conversion Fee Antitrust Litigation*, 265 F.Supp.2d 385, 426 (S.D.N.Y. 2003) ("These purely conclusory allegations cannot suffice to state a claim based on veil-piercing or alter-ego liability, even under the liberal notice pleading standard"); *Kingdom 5-KR-41, Ltd. v. Star Cruises PLC*, No. 01 Civ. 2946(AGS), 2002 WL 432390, * 12 (S.D.N.Y. March 20, 2002) ("[I]n order to overcome the 'presumption of separateness' afforded to related corporations, [plaintiff] is required to plead more specific facts supporting its claims, not mere conclusory allegations") (quoting *De Jesus v. Sears, Roebuck & Co.*, 87 F.3d 65, 69–70 (2d Cir. 1996).

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. *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.[8] 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.

Second, Plaintiffs' boilerplate "information and belief" alter ego allegations are insufficient as a matter of law. The Federal rules do not recognize usage of the phrase

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[8] This lumping of all entities as "defendants" is alone sufficient to grant Defendants' motion to dismiss. *See McDonald v. Kiloo Aps*, 385 F. Supp. 3d 1022, 1040 (N.D. Cal. 2019) (dismissing complaint for lumping the defendants in allegations); *see also In re Resistors Antitrust Litig.*, 2017 WL 3895706, at *4 (N.D. Cal. Sept. 5, 2017) ("indiscriminate and generalized lumping together of defendants does not make for a sound pleading approach"); *Gibson Guitar Corp. v. Viacom Int'l Inc*., 2013 WL 877967, at *3 (C.D. Cal. Mar. 8, 2013) (the conclusory lumping together of defendants makes it difficult to discern what actions have been alleged against which defendants and is not sufficient to meet the pleading standard set forth in *Twombly* and *Iqbal*).

"information and belief" as a proper pleading device. *See Vespa v. Singler-Ernster, Inc*. 2016 WL 6637710, at *1 (N.D. Cal., Nov. 8, 2016) ("The phrase 'on information and belief' at best constitutes surplusage . . ." and suggests that the party is "engaging in speculation to an undue degree . . . .") *Id*. Factual allegations made on information and belief are only proper if they specifically allege that they will have evidentiary support after reasonable opportunity for further investigation or discovery. *See* Fed. R. Civ. Proc. 11(b)(3). However, Rule 11(b)(3) "does not permit [a] [p]laintiff to allege claims in the absence of any facts, simply because [the] [p]laintiff speculates that those facts will eventually be discovered." *Herrera v. Los Angeles Unified Sch. Dist.*, 2017 WL 7888037, at *3 (C.D. Cal. Nov. 6, 2017) (quoting *Chagby v. Target Corp.*, No. CV 08-4425-GKH(PJWX), 2008 WL 5686105, at *4 fn. 2 (C.D. Cal. Oct. 27, 2008), aff'd, 358 F. App'x 805 (9th Cir. 2009). Plaintiffs' Complaint is replete with this deficiency and *all* of Plaintiffs' alter ego claims are improperly pled on information and belief. *See* Complaint ¶¶ 12, 14, 15, 16, 17, 19, 20, 22, 58, 102, 105, 110. It is evident that Plaintiffs are improperly attempting to bootstrap the Non-SGM Defendants into this lawsuit on mere conjecture. Plaintiffs' Complaint must be dismissed on this basis alone.

Third, 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 an alter ego claim. 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.

3. Plaintiffs Concede Facts Defeating Their Alter-Ego Claims Against KPC Healthcare.

As noted above, all of Plaintiffs' alter ego claims must fail as a matter of law. But even more astonishingly, Plaintiffs' Complaint *itself* alleges facts that necessarily defeat their alter ego claims against Non-SGM Defendant, KPC Healthcare. Specifically, Plaintiffs admit, in paragraph

41 of their Complaint, that KPC Healthcare has been sold to an Employee Stock Ownership Plan that is not owned by Dr. Chaudhuri or 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. KPC HealthCare should be dismissed for this additional reason.

E. Plaintiffs' Boilerplate "Agency, Aiding and Abetting, and Conspiracy" Allegations Do Not Save Their Failed Alter Ego Claims.

Knowing that their alter ego claims are doomed to fail, Plaintiffs attempt to resuscitate their claims against the Non-SGM Defendants via boilerplate "agency, aiding and abetting and conspiracy" allegations. (Compl. ¶23-26). These boilerplate allegations are insufficient to create liability for the Non-SGM Defendants as a matter of law. It is undisputed that SGM, and only SGM, entered into the APA with Plaintiffs. The Non-SGM parties are not signatories to the contract and cannot be directly liable for its breach. *Conder v. Home Savings of Am.*, 680 F. Supp. 2d 1168, 1174 (C.D. Cal. 2010) (holding that plaintiff failed to state a claim for breach of contract against defendant because it was not a party to the contract). As a result, Plaintiffs seek to hold the Non-SGM Defendants liable for breach of contract on the basis of "agency; aiding and abetting; and conspiracy." *See* Compl. ¶¶ 22-26. The law does not recognize such liability – "there is no cause of action for civil conspiracy to breach a contract." *Hanni v. Am. Airlines, Inc.*, 2008 WL 5000237, at *5 (N.D. Cal. Nov. 21, 2008); *Hale Bros. Inv. Co., LLC v. StudentsFirst Inst.*, 2017 WL 590255, at *8 (E.D. Cal. Feb. 14, 2017) ("[c]onspiracy to breach a contract is not a legally cognizable claim…."); *Applied Equip. Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal. 4th 503 (1994) (explaining rationale for rule that conspiracy does not extend to contract claims); *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).[9]

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[9] Nor could Dr. Chaudhuri conspire with SGM. *Hanni v. Am. Airlines, Inc.*, 2008 WL 5000237, at *4 (N.D. Cal. Nov. 21, 2008) ("There can be no civil conspiracy among a corporation and its own employees.").

V. CONCLUSION

For the reasons discussed above, Defendants request that the Court grant their Motion to Dismiss.

Dated: February 19, 2020

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

By: */s/ Gary E. Klausner*
Gary E. Klausner
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 ANDMOTION TO DISMISS PLAINTIFFS' COMPLAINT [Fed. R. Civ. Proc. 12(b)(1) & 12(b)(6)]** 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 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. SERVED BY UNITED STATES MAIL: 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 will be completed no later than 24 hours after the document is filed.

☐ 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 **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 will be completed no later than 24 hours after the document is filed.

Served via Attorney Service

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*