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SAMUEL R. MAIZEL (Bar No. 189301)
samuel.maizel@dentons.com
SAM J. ALBERTS (admitted *pro hac vice*)
sam.alberts@dentons.com
SONIA R. MARTIN (Bar No. 191148)
sonia.martin@dentons.com
TANIA M. MOYRON (Bar No. 235736)
tania.moyron@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: (213) 623-9300 / Fax: (213) 623-9924

Attorneys for the Chapter 11 Debtors and Debtors In Possession

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

UNITED STATES BANKRUPTCY COURT
FOR THE 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.

Lead Bankruptcy Case No. 2:18-bk-20151-ER
Jointly Administered With:
CASE NO.: 2:18-bk-20162-ER
CASE NO.: 2:18-bk-20163-ER
CASE NO.: 2:18-bk-20164-ER
CASE NO.: 2:18-bk-20165-ER
CASE NO.: 2:18-bk-20167-ER
CASE NO.: 2:18-bk-20168-ER
CASE NO.: 2:18-bk-20169-ER
CASE NO.: 2:18-bk-20171-ER
CASE NO.: 2:18-bk-20172-ER
CASE NO.: 2:18-bk-20173-ER
CASE NO.: 2:18-bk-20175-ER
CASE NO.: 2:18-bk-20176-ER
CASE NO.: 2:18-bk-20178-ER
CASE NO.: 2:18-bk-20179-ER
CASE NO.: 2:18-bk-20180-ER
CASE NO.: 2:18-bk-20181-ER

Chapter 11 Cases
Hon. Judge Ernest M. Robles

Adversary No. 2:20-ap-01051-ER

DEBTORS' REPLY IN SUPPORT OF MOTION TO DISMISS COMPLAINT UNDER RULE 12(b), WITH PREJUDICE

Hearing Date and Time:
Date: tbd
Time: tbd
Place: Courtroom 1568
255 E. Temple St.
Los Angeles, CA 90012

1820151200526000000000006

CALIFORNIA NURSES ASSOCIATION (CNA)

Plaintiff,

v.

VERITY HEALTH SYSTEMS OF CALIFORNIA, INC., a California Corporation; ST. FRANCIS MEDICAL CENTER, an Affiliate; ST. VINCENT MEDICAL CENTER, an Affiliate; SETON MEDICAL CENTER, an Affiliate; ST. FRANCIS MEDICAL CENTER OF LYNWOOD, an Affiliate; ST. VINCENT DIALYSIS CENTER, INC., an Affiliate; VERITY HOLDINGS, LLC, an Affiliate; DEPAUL VENTURES, LLC, an Affiliate; RICHARD ADCOCK, an Individual; STEVEN SHARRER, an Individual, and DOES 1 through 500,

Defendants.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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601 SOUTH FIGUEROA STREET, SUITE 2500
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(213) 623-9300

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601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

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601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

Verity Health System of California, Inc. ("VHS"), Seton Medical Center ("SMC"), St. Vincent Medical Center ("SVMC"), St. Vincent Dialysis Center, Inc. ("SVDC"), St. Francis Medical Center ("SFMC"), Verity Holdings, LLC ("Holdings") and DePaul Ventures, LLC ("DePaul," and collectively with VHS, SMC, SVMC, SVDC, SFMC, and Holdings, the "Institutional Defendants"), eight of seventeen debtors (collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases") proceeding under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"),[1] hereby submit this Reply in opposition to *California Nurses Association's Opposition to Defendants Verity Health System of California, Inc.*, *et al's*., Motions To Dismiss Complaint [Adv. Pro. Docket No. 24][2] (the "Opposition") and in further support of the *Defendants' Motion to Dismiss Complaint Under Rule 12(b), With Prejudice* [Adv. Pro. Docket No. 12] *and Defendants Richard Adcock And Steven Sharrer's Joinder In Debtors' Motion To Dismiss Complaint* [Adv. Pro. Docket No. 13] (collectively, the "Motion To Dismiss") for entry of an order, pursuant to Federal Rule of Civil Procedure ("Civil Rules") 12(b)(6) incorporated by Rule 7012(b) of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), for dismissal with prejudice of the complaint filed in the above-captioned adversary proceeding (the "Complaint" or "Adversary Proceeding") commenced by the California Nurses Association ("Plaintiff" or "CNA"), and assert as follows:

I. INTRODUCTION

This action arose after the public refusal of Strategic Global Management, Inc. ("SGM") to close the acquisition of the Debtors' remaining hospital facilities in December 2019, including SVMC and its on-campus dialysis center, SVDC (collectively, "St. Vincent"). Once it became clear that SGM did not intend to close the sale, the Debtors immediately took action by, among other things, filing a motion requesting approval to close St. Vincent, which the Bankruptcy Court granted in early January 2020. Upon approval by the Bankruptcy Court, the process of closing

[1] Unless specified otherwise, all chapter, "§" and section references are to the Bankruptcy Code, and all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure.

[2] "Adv. Pro. Docket" refers to the docket in this Adversary Proceeding, Case No. 20-01051. "Docket No." refers to the docket in the Lead Chapter 11 Bankruptcy Case, No. 18-20151.

and liquidating St. Vincent immediately began. It was in that context (including earlier WARN notices) that CNA nurses were separated from employment. The situation in which Debtors found themselves when they obtained authority to close St. Vincent on an emergency basis is precisely the situation contemplated by the liquidating fiduciary exception, pursuant to which fiduciaries who are liquidating a business are not "employers" under the Federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101 et seq. (the "WARN Act") and the California WARN Act, California Labor Code §§ 1400-1408 ("Cal-WARN Act", and collectively with the WARN Act, the "WARN Acts"). Given the WARN framework when a business is liquidating in bankruptcy, the undisputed facts here do not support CNA's claim of a WARN violation.

CNA's claim that the Debtors were sidestepping a notice obligation "to avoid the inconvenience of a potential staffing shortage" (Opp. at 1:5-7) is contradicted by the indisputable facts in the Complaint. As even CNA admits, the Debtors provided WARN Notice in August 2019 in the context of the Court approved sale of St. Vincent to SGM. (Compl. Ex. 1). CNA also admits that the Debtors provided follow up notices advising CNA and the St. Vincent nurses of the status of their anticipated termination of employment given the delays associated with the closing of the approved SGM Sale (which ultimately did not close). (Compl. Exs. 2, 3).

Similarly, the lengthy discussion of the WARN Acts in CNA's Opposition does not change the fact that CNA fails to state a claim for violation of those acts because the Debtors were liquidating fiduciaries as to St. Vincent at the time the CNA represented employees were separated from employment. The undisputed facts here require that this issue be decided in the Debtors' favor on a Civil Rule 12(b)(6) motion. Further, the fact that the Debtors operated the hospital *before* receiving Bankruptcy Court approval to close St. Vincent does not in any way negate the dispositive fact that St. Vincent was in the liquidation process *after* receiving Bankruptcy Court approval to shut down, including at the time the represented nurse-members were terminated. No amount of repleading can aid CNA in stating a valid claim for a WARN Act violation and this Court should grant dismissal, with prejudice, at this time.

CNA's tort claims similarly should be dismissed with prejudice for at least two reasons.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

First, CNA lacks associational standing to bring these claims. The claims are predicated on the contention that the Defendants somehow committed intentional or negligent misrepresentation by concealing the difficulties with closing the SGM transaction—facts that were contained in myriad Bankruptcy Court pleadings and public hearings in which CNA actively participated. CNA's Opposition confirms it lacks associational standing to pursue its members' state law claims. CNA concedes that the Supreme Court's test set out in *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977) controls, but attempts to ignore the third prong of that test, which is not satisfied here because the claims asserted require participation of individual members in the lawsuit. Moreover, CNA's suggestion that the California legislature intended to remove this generally applicable prudential limitation on standing for misrepresentation claims finds no valid support in law or fact. CNA's attempt to rely on California state court decisions is misplaced since the *Hunt*-test for associational standing applies to actions in federal courts. The fraud claims should be dismissed because that test is not satisfied here.

Second, CNA's Opposition confirms it has not (and indeed cannot) adequately pled facts supporting its baseless claims for intentional concealment and negligent misrepresentation. CNA no longer contends that Defendants made affirmative factual misrepresentations. CNA also admits that Defendants affirmatively apprised CNA and the nurses that "it was *possible* the sale would be unsuccessful," and that "CNA and the nurses knew that it was possible that he sale might fall through, and that the hospital might shutdown…" (Opp. at 31:13-15, 34:11-13 [emphasis in original].) CNA cannot premise fraud claims on the theory that Defendants' factually accurate representations led CNA to believe that Defendants were "optimistic" the sale would go through and that closure of the hospital was "unlikely." (Opp. at 34:14.) As a matter of law, opinions about future events are not actionable.

For these and other reasons noted below, the Motion to Dismiss should be granted, the Adversary Proceeding be dismissed, and the Court should grant Debtors all further relief that is warranted by law and equity.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

II. ALLEGATIONS SET FORTH IN THE COMPLAINT AND KEY FACTS

1. The terms and conditions of the St. Vincent nurses' employment were, at all relevant times, governed by a collective bargaining agreement between St. Vincent and CNA. (Compl. ¶26).

2. On May 2, 2019, the Bankruptcy Court issued an order approving the Asset Purchase Agreement under which SGM would acquire the assets of St. Vincent and two other hospitals (Comp. ¶24).

3. In anticipation of the SGM Sale, on August 12, 2019, the Debtors sent a notice under the WARN Act to CNA and each of its members (Compl., Ex. 1) stating in relevant part:

> In connection with the Sale, the Debtors will be separating the employment of all of St. Vincent's employees, which may result in an "employment loss" within the meaning of the WARN Act and the Cal-WARN Act. Under the Asset Purchase Agreement between the Debtors and the Purchaser, the Purchaser has agreed to make offers of employment to substantially all of St. Vincent's employees, subject to the other terms and conditions contained in such Asset Purchase Agreement.
>
> The closing of the Sale is subject to certain regulatory and other approvals and the satisfaction of certain other conditions agreed to between the Debtors and the Purchaser. While the Debtors are optimistic that the Sale will close, there is a possibility that the Sale will be unsuccessful. In that event, St. Vincent may close and none of its employees may be hired by the Purchaser. Even if the Sale closes and St. Vincent remains open, employees at St. Vincent may suffer an "employment loss" within the meaning of the WARN Act and Cal-WARN Act because the Debtors will separate the employment of all of St. Vincent's employees upon the closing of the Sale. For those employees, if any, who are not hired by the Purchaser, the employment loss is expected to be permanent.
>
> (Compl., Ex. 1).

4. The August 12, 2019 Notice explained that "[b]ased on the best information available to date, we believe the Sale and separations of employment will occur between October 18, 2019 and October 31, 2019." *Id*.

5. On August 23, 2019 "Verity represented to this Court that failure to consummate the SGM sale would likely result in the closure of St. Vincent and Seton hospitals." (Compl. ¶31).

6. On October 23, 2019, the Debtors issued a WARN extension notice stating, in

relevant part:

> "[T]he separations of employment must be postponed and will not occur at the time originally anticipated. At this time, we anticipate the Sale and separations of employment will occur between **November 17, 2019 and November 30, 2019**.
>
> We will continue to keep you apprised of any new developments and will provide you with updated information should circumstances change with respect to the Sale and the separations of employment. (Compl. ¶33; Ex. 2).

7. On November 22, 2019 Verity filed a motion with this Court for permission to file its "Plan B" should SGM not consummate the sale. (Compl. ¶40).

8. On November 25, 2019 Debtors issued a WARN extension notice informed CNA and its members that "the separations of employment will be further postponed due to the circumstances noted below" and explained "we anticipate the Sale and *separations of employment* will occur between **December 6, 2019 and December 19, 2019**." (Italic emphasis added). (Compl. ¶41, Ex. 3).

9. SGM failed to close the SGM Sale by December 5, 2019. (Compl. ¶47).

10. On December 18, 2019, in follow-up to the November 25, 2019 Notice advising that separations of employment would occur on December 19, 2019, the Debtors advised St. Vincent employees *via* email that "KPC Group . . . failed to close the sale transaction, as ordered by the Bankruptcy Court" and notified them that "your employment will NOT end *on December 19, 2019*, as we had anticipated." (Compl., Ex. 4) (emphasis added).

11. On January 6, 2020, the Debtors filed an *Emergency Motion for Authorization to Close St. Vincent Medical Center* (the "Closure Motion") under which the Debtors sought authorization to close St. Vincent (Compl. ¶54).

12. On January 9, 2020 the Bankruptcy Court granted the Closure Motion. (Compl. ¶55).

13. On January 10, 2020 the Debtors provided yet another WARN Notice to CNA and its members (Compl., Ex. 5). This notice informed Plaintiff and its represented members "of the permanent closure of St. Vincent Medical Center . . . and St. Vincent Dialysis Center" and

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

explained:

> We know that you were aware of the separations of employment at St. Vincent based on the prior WARN notice you received. We had hoped there would be an opportunity for continued employment with SGM when the sale closed. In light of the unforeseen circumstances relating to the sale and the unexpected need to close St. Vincent as a last resort, this additional WARN notice is being provided to you as soon as practicable after the Order.

(Compl., Ex. 5).

14. "As of January 18, 2020, St. Vincent had no patients." (Compl. ¶58).

III. ARGUMENT

A. Judicial Notice Of Records Of This Court Is Appropriate

Initially, it is important to emphasize that the Debtors are not requesting that the Bankruptcy Court determine disputed factual issues. Instead, the Debtors ask this Court to take judicial notice of the existence of the documents and the undisputed facts set forth therein. This request is both proper and commonplace.

It is well settled that courts may take judicial notice of records of court documents from the underlying bankruptcy case and documents incorporated by reference in the Complaint. *See e.g., United States v. Ritchie,* 342 F.3d 903, 908 (9th Cir. 2003) (providing that the court may consider documents incorporated by reference in complaint, such as those that form the basis of the plaintiff's claims); *In re Century City Doctors Hosp., LLC,* BAP No. CC-09-1235-MkJaD, 2010 WL 6452903, at *6 (B.A.P. 9th Cir. Oct. 29, 2010) ("[C]ourt documents filed in an underlying bankruptcy case are subject to judicial notice in related adversary proceedings[.]"). In addition, a court may properly take judicial notice of the entry of its own orders and the contents of its own orders. *Id.* at *12 ("Notwithstanding Plaintiffs' claims to the contrary, the terms and contents of the court's own authorization orders were not subject to reasonable dispute."); *see also Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, 99 F. Supp. 3d 1110, 1125 (C.D. Cal. 2015) (The *Care First* Order is a court record, and thus, it is taken from sources whose accuracy cannot reasonably be questioned. Therefore, this Court may take judicial notice of the *Care First* Order and does so now."); s*ee Ambulatory Surgery Ctr., LLC*, 99 F. Supp. 3d at 1125

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

(taking judicial notice of the existence of "Findings of Fact, Conclusions of Law, and Order under Section 1129 of the Bankruptcy Code and Rule 3020 of the Bankruptcy Rules Confirming Debtors' Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy []; and Debtors' Second Amended Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code [].")

Thus, this Court can and should rely on the record developed in the Bankruptcy Case. However, in any event, the key undisputed facts relevant to this Motion are set forth on the face of the Complaint (*see* Section II above).

B. CNA Fails To State A Claim Under The WARN Acts

Courts in the Ninth Circuit have held that the a motion to dismiss is a proper vehicle to dispose of an insufficiently alleged WARN Act claim. To state a viable claim for relief under the WARN Act employer status must be sufficient alleged and, if not, a motion to dismiss should be granted. *In re Century City Doctors Hosp*., *LLC*, 2010 WL 6452903, at *8; *see also Estrada v. Salyer Am*., No. C 09-05618 JW, 2010 WL 11580074, at *4-5 (N.D. Cal. Mar. 31, 2010) (granting motion to dismiss California and federal WARN Claims based on liquidating fiduciary exception).

As the Bankruptcy Court for the Ninth Circuit explained in finding that the liquidating fiduciary exception could properly be considered on a motion to dismiss:

> Plaintiffs characterize the "liquidating fiduciary exception" as an affirmative defense, which Plaintiffs contend the Trustee was obliged to plead and prove. Thus, according to Plaintiffs, the liquidating fiduciary exception could not be properly considered in conjunction with a Civil Rule 12(b)(6) motion. We disagree with Plaintiffs' characterization of the liquidating fiduciary exception as an affirmative defense. Plaintiffs cite no authority to support their characterization nor are we aware of any.

In re Century City Doctors Hosp., *LLC*, 2010 WL 6452903, at *8.

Here, no fact driven dispute exists and the Motion to Dismiss may be granted based on the allegations on the face of the Complaint. As acknowledged by Plaintiff on the face of the Complaint, the Bankruptcy Court granted Debtors' Closure Motion (Compl. ¶55) and the

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

employment separations giving rise to this lawsuit occurred in that specific context. As such, Debtors were liquidating fiduciaries as to St. Vincent and no WARN Act liability can exist.

1. The Liquidating Fiduciary Exception Bars Plaintiff's Federal WARN Act Claim

a. The Liquidating Fiduciary Exception Applies To Debtors In Possession In Chapter 11 Cases

The Ninth Circuit has applied the liquidating fiduciary exception to exempt a trustee from liability under the Act. *In re Century City Doctors Hosp*., *LLC*, 2010 WL 6452903, at *8. There is no rational argument to distinguish between trustees and debtors-in-possession who terminated employees in connection with a business closure. CNA's attempt to distinguish this case on that basis fails because a debtor in possession is as much a fiduciary as a trustee. Bankruptcy Code § 1107 provides that a debtor in possession "shall perform all of the functions and duties, except the duties specified in sections 1106(a)(2), (3) and (4) of this title, of a trustee serving as a case under this chapter."[3] In addition, as explained by the United States Supreme Court, "if a debtor remains in possession—that is, if a trustee is not appointed—the debtor's directors bear essentially the same fiduciary obligation to creditors and shareholders as would the trustee for a debtor out of possession." *Commodity Futures Trading Com v. Weintraub*, 471 U.S. 343, 355 1994 (1985); *see also In re United Healthcare Sys., Inc.,* 200 F.3d 170, 177 n.9 (3d Cir. 1999) ("United Healthcare, as a debtor-in-possession, is a fiduciary for its estate and for its creditors.").

In fact, the Third Circuit applied the liquidating fiduciary exception to a debtor in possession in a hospital case. *See In re United Healthcare Sys., Inc.,* 200 F.3d at 176-79 (hospital in Chapter 11 bankruptcy did not qualify as employer because it "was operating not as a 'business operating as a going concern,' but rather as a business liquidating its affairs."). Here, the employees at issue were separated from employment due to a Bankruptcy Court-approved emergency closure of St. Vincent. Such facts should be dispositive. Thus, it is difficult to

[3] The exceptions of § 1106 (a)(2) (filing schedules when a debtors does not), §1106 (a)(3) (investigate certain acts and conduct) and § 1106 (a)(4) (file a statements reporting on such investigation) are inapplicable.

construct an argument where a debtor in a situation of an emergency closure would not be a liquidating fiduciary.

b. Liquidating Fiduciary Status Is Determined At The Time Of The Terminations

In an effort to avoid the logical conclusion that the Debtors acted as liquidating fiduciaries in response to an emergency and pursuant to a valid Court order, CNA asserts that WARN obligations should be measured from the 60-day period prior to the termination and asserts the same is true when applying the faltering company or unforeseeable business circumstance exceptions. (Opp. at 21:8-28). However, those other exceptions are not at issue here and cases relating to these exceptions or the WARN Acts in the absence of the liquidating fiduciary exception are inapposite.

Courts in the Ninth Circuit, as well as others, have confirmed that the relevant time period for application of the liquidating fiduciary exception is "at the time of the plant closing or mass layoff." *Chauffeurs, Sales Drivers, Warehousemen & Helpers Union Local 572 v. Weslock Corp*., 66 F.3d 241, 244 (9th Cir. 1995) ("[T]he crucial question is not the status of the defendant's legal relationship to the business, but instead, if *at the time of the plant closing* or mass layoff the defendant is responsible for operating the business as a going concern.") (emphasis added); *In re Century City Doctors Hosp*., *LLC*, 2010 WL 6452903, at *8 (relevant time period is "at the time of the terminations"); *Estrada,* 2010 WL 11580074, at *3 (The crucial question is whether the defendant is responsible for operating the business as a going concern *at the time of the mass layoff*.") (emphasis added); *see also In re MF Glob. Holdings Ltd.,* 481 B.R. 268, 283 (Bankr. S.D.N.Y. 2012) (key question was "whether the Debtors were liquidating or attempting to reorganize *when the layoffs occurred*") (emphasis added). The cases cited by CNA are either from other circuits or do not involve the liquidating fiduciary exception and are therefore inapposite. (Opp. at 21:11-21).

As the Complaint itself admits, the Bankruptcy Court granted Debtors' emergency motion to close St. Vincent (Compl. ¶55) and CNA represented members were subsequently terminated

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

(Compl. ¶¶ 56, 57). Because Debtors were liquidating St. Vincent at the time of the terminations, they were liquidating fiduciaries and exempt from the WARN Acts.

c. Integrated Employer Status And Operation Prior To Court Approved Shut-Down Order Do Not Impact Application Of The Liquidating Fiduciary Exception

Next, CNA seeks to avoid dismissal by contending that the Institutional Defendants are a single employer and because certain of them continue to operate other hospitals they cannot constitute a liquidating fiduciary. This contention is without merit. Whether certain Institutional Defendants are a single employer is not relevant as they constitute liquidating fiduciaries as to the only entity of relevance here: St. Vincent. As laid out plainly by the Depart of Labor commentary, the relevant issue is whether the Debtors "sole function in the bankruptcy process [was] to liquidate a failed business[.]" 54 Fed. Reg. 16,045. Thus, the key question is whether the Institutional Defendants were liquidating fiduciaries as to the "failed business" *i.e.* St. Vincent—when the court granted the Debtors' emergency motion to close St. Vincent and the CNA represented St. Vincent nurses were terminated. In *Weslock Corp.*, 66 F.3d at 244, the Ninth Circuit addressed this precise point:

> The plain language of the statute easily embraces *any* defendant who engages in a "business enterprise." In this regard, we think ***the crucial question is not the status of the defendant's legal relationship to the business but, instead, if at the time of the plant closing or mass layoff the defendant is responsible for operating the business as a going concern***.

66 F.3d at 244 (emphasis added).

Here, it is without dispute that the "failed business" is St. Vincent. Nor is it disputable that the Debtors sought authority to close St. Vincent by the Closure Motion filed on January 6, 2020, pursuant to §§ 105, 363 and 1108. In light of the relief sought and the Bankruptcy Court's order granting Debtors' Closure Motion, there can be no legitimate dispute that the Institutional

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601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

Defendants who were even arguably involved (whether an integrated enterprise or not) were liquidating St. Vincent after entry of that order.[4]

Moreover, merely because St. Vincent operated for a period of time after filing for Chapter 11 bankruptcy does not impact application of the liquidating fiduciary exception once the Bankruptcy Court approved closure of St. Vincent. By way of example, the court in *In re World Mktg. Chi., LLC*, cited by CNA, explained that where a court enters an order in accordance with § 1108 constraining the right to operate, the liquidating fiduciary exception may be invoked by a debtor in possession in a Chapter 11 bankruptcy. *In re World Mktg. Chi., LLC*, 564 B.R. 587, 600 (Bankr. N.D. Ill. 2017) ("Unless the court has entered an order under section 1108 constraining the right to operate a debtor's business, the plain words of the commentary appear to clearly exclude, therefore, both chapter 11 trustees and debtors in possession from invoking the liquidating fiduciary exception.")

Here, the Bankruptcy Court approved the Closure Motion, which was brought under §§ 105, 363 and 1108. In reaching its decision, the Bankruptcy Court found that: "[u]pon initiation of the Closure Plan, St. Vincent will enter the process of liquidation and will no longer be an operating business." (Motion to Dismiss at 20:13-19; *Request for Judicial Notice in support of Debtors' Motion to Dismiss Complaint Under Rule 12(b), with Prejudice* ("RJN") Ex. 45, [Docket No. 3933].) CNA's suggestion that the Bankruptcy Court, by not expressly invoking § 1108 somehow deprived the Debtors' status as a liquidating fiduciary, is contradicted by the rationale and outcome reached by this Court and otherwise strains credulity. To the contrary, once the order to close was approved Debtors became liquidating fiduciaries and their intent was to liquidate. In contrast in *Law v. American Capital Strategies*, 2007 U.S. Dist. LEXIS 5936, at *46-47 (M.D. Tenn. Jan. 26, 2007) cited by CNA, the defendant there was still "performing its normal business function and had not filed a petition for bankruptcy when the WARN Act notices

[4] *In re MF Glob. Holdings, Ltd* cited by CNA does not change this result. There, the court found there was no evidence the Plaintiffs were employed solely by the liquidating entity and reversed dismissal and remanded the action because Plaintiffs were not required to plead their immediate employer as a prerequisite to pleading that all the defendants constitute a single employer. 2014 U.S. Dist. LEXIS 113853 (S.D.N.Y. Aug. 14, 2014).

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

were sent." Under those circumstances, the liquidating fiduciary exception did not apply. *Id.* Such is not the case here.

Therefore, Plaintiff's WARN Act claims should be dismissed with prejudice because Debtors were liquidating fiduciaries once the Bankruptcy Court approved the motion to close St. Vincent and were thus exempt from the WARN Acts at the time of the subsequent terminations.

2. The Liquidating Fiduciary Exception Bars Plaintiff's California WARN Act Claim

The liquidating fiduciary exception is not a statutory exception and is not referenced in either the Federal or the California WARN Acts. Instead, this exception is a judicially created exception reflecting "a limitation on the statutory definition of employer." *In re Century City Doctors Hosp., LLC*, 2010 WL 6452903, at *6. In its commentary to the regulations the Department of Labor explained the purpose of excepting liquidating fiduciaries from the WARN Act:

> DOL agrees that a fiduciary whose sole function in the bankruptcy process is to liquidate a failed business for the benefit of creditors does not succeed to the notice obligations of the former employer because the fiduciary is not operating a "business enterprise" in the normal commercial sense.

54 Fed. Reg. 16,045 (1989).

Where the purpose and wording of a federal statute is similar to that of a California statutes, California courts often look to federal cases for assistance in interpreting the state statute. *Mendoza v. Town of Ross*, 128 Cal. App. 4th 625, 635 (2005) ("Because the antidiscrimination objectives and relevant wording of title VII of the Civil Rights Act of 1964 (Title VII) … are similar to those of the FEHA, California courts often look to federal decisions interpreting these statutes for assistance in interpreting the FEHA."); *see also Reno v. Baird,* 18 Cal. 4th 640, 647 (1998) (California courts often look to federal decisions interpreting federal statutes in interpreting state statutes, where the "objectives and relevant wording" of the federal statutes are similar to those of the state statutes.) The objectives of the California and Federal WARN Acts, to provide employees with advance notice of a job loss, are identical.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

The terms of the WARN Acts, while not identical, are substantially similar as relevant to the matters at issue in this action. The fact that the definition of "employer" in the California WARN Act refers to an entity that "operates" a "covered establishment" versus a "business enterprise" as referred to under the federal WARN Act in no way materially changes the definition of "employer" for the purpose of the liquidating fiduciary exception, which is to exclude those who are acting solely as liquidating fiduciaries vis-à-vis the "covered establishment" or "business enterprise" from the obligations of the WARN Act. *Weslock Corp*., 66 F.3d at 244 (In discussing the definition of "employer" explaining "*the crucial question is not the status of the defendant's legal relationship to the business* but, instead, if at the time of the plant closing or mass layoff the defendant is responsible for operating the business as a going concern.") (emphasis added.)

Critically, the California WARN Act itself looks to the federal WARN Act for key requirements, including the specific information to be included in the actual WARN notice itself. Cal. Labor Code § 1401(b) ("An employer required to give notice of any mass layoff, relocation, or termination under this chapter shall include in its notice the elements required by the federal Worker Adjustment and Retraining Notification Act" (29 U.S.C. § 2101 *et seq*.)). The California WARN Act directly looks to those elements, even though they contain terms and definitions that differ from those in the California WARN Act.

Similarly, CNA's argument that this Court should not apply the liquidating fiduciary exception "[b]ecause California's goal was to expand WARN Act coverage" is a red herring: the intent to expand coverage, which Debtors do not dispute, in no way means that the California legislature intended the California WARN Act to apply to an entity that does not qualify as an "employer" under the Act.

Plaintiff cites no cases, and Debtors are unaware of any cases, holding that the liquidating fiduciary exception does not apply under the California WARN Act. To the contrary, the federal court in California that has specifically addressed this issue applied the exception. In *Estrada v. Salyer Am,* the secured creditor defendants had appointed a receiver for their business to collect debts owed to them. 2010 WL 11580074, at *1-2. Ultimately the receiver determined the

business could no longer be operated and closed all worksites without prior written notice. *Id.* at *1-2. Plaintiffs brought claims for violation of the federal and California WARN Act, among others, against the creditor defendants who moved to dismiss these claims. *Id.* at *2. In granting the creditor defendants' motion to dismiss, the court explained "[t]he crucial question is whether the defendant is responsible for operating the business as a going concern at the time of the mass layoff." *Id.* at *3. The court found neither the receiver nor the creditor defendants were operating the business as a going concern and therefore granted the creditor defendants' motion to dismiss as to the federal WARN Act claim. *Id.* at *3-4. The court next considered "whether [creditor defendants] remain liable for violations of the California WARN Act[.]" *Id.* at *5. The court relied upon Ninth Circuit precedent in holding the creditor defendants also could not be held liable as employers under the California WARN Act:

> The Ninth Circuit has established the circumstances in which a secured creditor can be considered an employer for purposes of Federal WARN Act liability. *See Chauffers*, 66 F.3d at 244. Plaintiffs do not cite any authority that would suggest a different standard under the California WARN Act or Cal. Labor Code § 203. Thus, absent any conflicting state law, the Court applies the *Chauffers* standard to determine whether a secured creditor is an employer for purposes of liability for purposes of analyzing Plaintiffs' state law claims. In doing so, as with Plaintiffs' Federal WARN Act claim, the Court finds that Moving Defendants may not be held liable as employers under the California WARN Act or California Labor Code § 203.

Estrada v. Salyer Am., 2010 WL 11580074, at 5. The fact that *Estrada* involved creditors who had appointed a receiver in no way changes its application of the liquidating fiduciary exception.[5]

Because the liquidating fiduciary exception applies to Debtors equally under the federal and California WARN Act, Plaintiff's WARN Act claims should be dismissed, with prejudice.

[5] Moreover, CNA's misleading contention that this case "is wholly inapposite" since the case considered "whether a *receiver* was a WARN Act employer" is not well taken. (Opp. at 11:7-14). While a receiver was appointed, at issue in the action were only the creditors' motions to dismiss. *Estrada* at *2. Thus, CNA's additional contention that the receiver would not have WARN liability even absent the liquidating fiduciary exception, is irrelevant.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

C. CNA Lacks Associational Standing to Assert the Intentional and Negligent Misrepresentation Claims Under Both The *Hunt* and *UCFW* Standards

CNA concedes that the Supreme Court articulated a three-part test in *Hunt* in order for an association to have associational standing to pursue claims on behalf of its members. *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977) ("Thus we have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit."). CNA is also correct that the Supreme Court explained that the third-prong of the test is a prudential one that Congress may remove by statute. *United Food & Commercial Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 555, 558 (1996) (hereinafter "*UFCW*"). CNA, however, fails to satisfy all three parts of the *Hunt* test. CNA also fails to show that only the first two parts of the *Hunt* test should apply because it does not provide any legal authority showing the California legislature removed the third prong of the *Hunt* test for intentional and negligent misrepresentation claims. Accordingly, CNA lacks associational standing to bring the state tort claims on behalf of its members.

1. CNA Makes No Attempt To Show It Meets The Third Prong Of The Hunt Test

As an initial matter, CNA does not assert that it can meet the third prong of the *Hunt* test, which requires that "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt*, 432 U.S. at 343. As explained in the Motion to Dismiss, the third prong of the test results in dismissal on the basis that the tort claims require individualized proof. (Motion to Dismiss at 26:17-27:12). Here, dismissal is warranted because CNA's tort claims seek monetary damages, including, among others, damages for mental pain and anguish and emotional distress, on behalf of its nurse-members. These claims necessarily require the participation of individual nurses to determine their mental pain and anguish and emotional distress, which are necessarily individualized. (Compl., ¶¶ 114-15). Likewise

damages for lost wages will depend on the individual nurse members' wage rates. Therefore, there is no legitimate dispute that CNA lacks associational standing under the three-part *Hunt* test and thus, these claims should be dismissed, with prejudice.

2. CNA Fails To Show That The California Legislature Removed The Third Prong Of The Hunt Test For Intentional And Negligent Misrepresentation Claims

In an effort to sidestep this requirement, CNA attempts to focus on how California courts provide a broad standard for associational or representative standing. Although California courts may apply a two-part standard in determining if there is associational standing in California state court, this point is irrelevant and misplaced as this case is *in federal court* and thus federal law on standing controls. *UFCW,* 517 U.S. at 551-58 (explaining that a litigant needs to meet both the constitutional test, arising from Article III's cases or controversies clause, and the prudential requirements under *Hunt* in order to have associational standing in a federal suit); *see also Lowell v. Lyft, Inc.,* 352 F. Supp. 3d 248, 257 (S.D.N.Y. 2018) (applying the *Hunt* test in action for claim under New York state law and finding "Plaintiff WDOMI does not have associational standing for its NYSHRL and NYCHRL claims because it fails to satisfy the third prong of the associational standing analysis for those claims."); *Equal Rights Ctr. v. Abercrombie & Fitch Co.,* 767 F. Supp. 2d 510, 523, 528-29 (D. Md. 2010), on reconsideration in part (Jan. 31, 2011) (applying the *Hunt* in action for claim of damages under Massachusetts and Wisconsin accommodations laws).

None of CNA's legal authorities point a different result to support its claim that CNA meets the three-part *Hunt* test for associational standing, nor does CNA provide any legal support to show that the third-prong of the *Hunt* test was abrogated by the California legislature for the misrepresentation claims.

First, CNA focuses on several California state court cases for the proposition that California associational standing law is broad. CNA cites to *Salton City*, *Tenants Ass'n of Park Santa Anita*, and *Raven's Cove Townhomes, Inc*., but all of these are state court cases analyzing whether there is standing in ***state court*** and they apply a two-part test that relies on California

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

Code of Civil Procedure Section 382. Here, this matter is in ***federal court*** and the standard articulated by the Supreme Court in *Hunt* and *UFCW* are the applicable standards for associational standing. CNA concedes this fact in its opposition as it asserts it meets the *Hunt* and *UFCW* requirements. (Opp. at 26).

Second, CNA itself cites to a federal case that shows how the *Hunt* and *UFCW* standards on associational standing control in a federal case where a non-profit, disabled persons advocacy organization sought to bring certain state law claims on behalf of its members. In *Equal Rights Ctr. v. Abercrombie & Fitch Co*., a non-profit organization filed a complaint that included claims alleging violation of laws of the District of Columbia, Massachusetts, and Wisconsin on an associational standing basis. *Equal Rights Ctr. v. Abercrombie & Fitch Co*., 767 F. Supp. 2d 510, 514, 517 (D. Md. 2010). The court in *Abercrombie* specifically applied the standards in *Hunt* and *UFCW* and held that the non-profit lacked associational standing to assert claims for damages under the Massachusetts and Wisconsin laws because there was no indication the legislatures for those two states intended to abrogate the prudential limits on standing. *Id*. at 529 ("And while the Supreme Court has more recently stated that the third element of the *Hunt* test may be considered only a prudential limitation on standing, *United Food & Commercial Workers*, 517 U.S. at 554–58, 116 S.Ct. 1529, I find no indication that the Massachusetts or Wisconsin legislatures intended to eliminate the generally applicable prudential limitations on standing. Because prudential limitations apply under to claims brought under these provisions, and because individual participation would be required to prove a claim for compensatory damages, the ERC lacks associational standing to assert claims for damages under the Massachusetts and Wisconsin laws.").

Lastly, in light of *Abercrombie* and federal precedent articulated by the Supreme Court, in order for CNA to show the prudential third-prong of the *Hunt* test does not apply, CNA needed to provide support that the California legislature intended to eliminate the generally applicable prudential limitations on standing for intentional and negligent misrepresentation claims. *See Abercrombie & Fitch Co.,* 767 F. Supp. 2d at 529; *Hunt*, 432 U.S. at 343; *UFCW,* 517 U.S. at 558. CNA has failed to make such a showing. The only cases CNA cites to merely articulate the

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

general associational standing standard in California state court matters, but the relevant inquiry is whether the California legislature has specifically disavowed the prudential limitation on standing for intentional and negligent misrepresentation claims. *See Abercrombie & Fitch Co*., 767 F. Supp. 2d at 529. CNA provides absolutely no such legal authority that specifically holds the California legislature has abrogated the prudential limitation on standing for such fraud claims. This deficiency is fatal to CNA's claim that it has associational standing to assert the state tort claims for its members

3. Contrary To CNA's Assertion, The Prudential Concerns Identified By The Supreme Court Are At Issue And Controlling

Contrary to CNA's assertion that the prudential concerns in *Hunt* and *UFCW* are not present, CNA seeks to bring claims to recover compensatory damages (including lost wages and lost employee benefits) and damages for mental pain, anguish, and emotional distress on behalf of its members that are inherently personal and individual to each member. As such, the third prong of the *Hunt* test applies in this case with significant force since issues of administrative convenience and efficiency are at play. Applying *UFCW*, the value of the third prong of the test applies here to "guard against the hazard of litigating a case to the damages stage only to find the plaintiff lacking detailed records or the evidence necessary to show the harm with sufficient specificity." *UFCW*, 517 U.S. at 556.

Also, while CNA asks this Court to permit it to pursue emotional distress damages on behalf of its members, CNA provides no authority for this request and actually concedes that case law excludes such damages from the scope of associational standing. (Opp. at 29:27-28). As CNA has not met its burden to show it has associational standing to pursue any misrepresentation claim, this Court should find CNA lacks associational standing for the intentional and negligent misrepresentation claims and dismiss these counts with prejudice.

D. <u>CNA Has Failed To Factually Allege State Law Fraud Claims</u>

In addition to not having standing, CNA's Opposition confirms that CNA has not (and indeed cannot) adequately pled specific facts supporting claims for intentional concealment or negligent misrepresentation under Civil Rule 9(b), for several reasons.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

1. CNA Fails To Allege An Intentional Misrepresentation

In its Opposition, CNA abandons its prior position that Defendants made affirmative factual misrepresentations. (Compl., ¶¶ 103-104.) Indeed, CNA *admits* that Defendants affirmatively apprised CNA and the nurses that "it was possible the sale would be unsuccessful," and that "CNA and the nurses *knew that it was possible that the sale might fall through, and that the hospital might shutdown*…" (Opp., at 31:13-15, 34:11-13 [emphasis added].) In addition, CNA admits that Defendants notified it on December 18, 2019 that the SGM Sale "had fallen through," which was a full nine days *before* the APA went on to terminate as a result of SGM's failure to close. (Opp. at 32:12-20.) Given these concessions, one wonders why CNA has not taken the appropriate steps of voluntarily dismissing these claims. Regardless, this Court should dismiss.

2. CNA Fails To Allege a Concealment of Material Fact

Unable to identify any affirmative factual misrepresentation, CNA contends it may premise fraud claims on the allegation that Defendants' factually accurate representations led CNA to believe that Defendants were "optimistic" the sale would go through and that closure of the hospital was "unlikely." (Opp. at 34:14.) That theory fails as a matter of law.

Defendants did not control whether the SGM Sale would close, and any expression of hope or optimism that the SGM Sale would close cannot supply a basis for a fraud claim as a matter of law. Opinions are not representations of fact, and they are not grounds for a misrepresentation claim. *Graham v. Bank of Am., N.A.,* 226 Cal. App. 4th 594, 606-07 (2014) (representations of opinion, which express the belief of the maker, without factual certainty, or the maker's judgment of quality or value, are not actionable misrepresentations); *Neu-Visions Sports v. Soren,* 86 Cal. App. 4th 303, 308 (2000) (opinions are not grounds for a misrepresentation cause of action); *Bily v. Arthur Young & Co.,* 3 Cal. 4th 370, 408 (1992) (negligent misrepresentation cannot be based on a casual expression of belief, but must be "a positive assertion of fact"). There was nothing improper or fraudulent in expressing hope and optimism that the SGM Sale would close. Indeed, the Bankruptcy Court did so as well. [Nov. 26, 2019 Hr'g Tr. at 14:20-22; 21:2-3]; *see also* RJN Ex. 35, *Order (1) Finding That SGM is*

Obligated to Close the SGM Sale by No Later Than December 5, 2019 and (2) Setting Continued Hearing on Debtors' Motion for Approval of Disclosure Statement [Docket No. 3724].

Moreover, failing to predict the future is not fraud. *Global Telecom Corp. v. Seowon Intech Co. Ltd.,* No. SACV 16-02212 AG, 2018 WL 6074545, at *3 (C.D. Cal. Mar. 16, 2018) ("To be sure, it's well settled 'that actionable misrepresentations must pertain to past or existing material facts .... Statements or predictions regarding future events are deemed to be mere opinions which are not actionable.'") (citation omitted); *Mueller v. San Diego Entertainment Partners, LLC,* No. 16cv2997-GPC(NLS), 2017 WL 3387732, at *7 (S.D. Cal. Aug. 7, 2017) ("It is a general rule that 'predictions as to future events, or statements as to future action by some third party, are deemed opinions, and not actionable fraud.'") (citation omitted); *Cansino v. Bank of Am.,* 224 Cal. App. 4th 1462, 1469 (2014) ("The law is well established that actionable misrepresentations must pertain to past or existing material facts. . . . Statements or predictions regarding future events are deemed to be mere opinions which are not actionable."); *Colgate v. JUUL Labs, Inc.,* 345 F. Supp. 3d 1178, 1195 (N.D. Cal. 2018) ("[A] negligent misrepresentation claim must be based on a misrepresentation of past or existing material facts and not on a promise or prediction as to future events."); *Thrifty Payless, Inc. v. Americana at Brand, LLC,* 218 Cal. App. 4th 1230, 1239 (2013) (to prove negligent misrepresentation a plaintiff must show the misrepresentation of a past or existing material fact); *Tarmann v. State Farm Mut. Auto Ins. Co.*, 2 Cal. App. 4th 153, 158 (1991) ("To be actionable, a negligent misrepresentation must ordinarily be as to past or existing material facts. '[P]redictions as to future events, or statements as to future action by some third party, are deemed opinions, and not actionable fraud.'"); *see also Louis v. Nailtiques Cosmetic Corp*., 423 Fed. Appx. 711, 713 (9th Cir. 2011) ("Promises too vague to be enforced will not support a fraud claim any more than they will one in contract.") (citations and quotations omitted); *In re Caere Corp. Sec. Lit.,* 837 F. Supp. 1054, 1058 (N.D. Cal. 1993) ("Defendants' statements are too vague to constitute actionable fraud."); *Byrum v. Brand,* 219 Cal. App. 3d 926, 942 (1990) ("The alleged representation by omission claimed . . . seems to us to be too remote . . . . [as] the record does not show he positively asserted any facts . . . that were not true, nor actively concealed or suppressed any such facts.").

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

CNA fails to cite any legal authority suggesting that Defendants were obligated to continually apprise CNA that "it was possible that the sale might fall through, and that the hospital might shutdown…" (Opp. at 34:11-13.) CNA admits it was well aware of such information, and does not dispute that it received real time notice of the status of the SGM Sale through near constant filings in the Bankruptcy Proceeding. CNA's alleged failure to read those filings does not mean that Defendants concealed information from CNA.

Moreover, CNA's belated complaint that the Debtors filed their "Plan B" under seal rings hollow. CNA does not dispute that it received notice of the Debtors' motion to make that filing under seal, in which the Debtors specifically disclosed that "SGM ha[d] yet to provide the Debtors with specific information regarding their intentions for the SGM Sale." [Docket No. 3678, ¶ 3.] CNA elected not to oppose such relief, and the time to bring such a challenge has passed.[6] Accordingly, CNA has waived any right to retroactively complain that it should have been given access to the information contained in the "Plan B" filing under seal.

In sum, CNA has failed to factually allege any concealment or factual misrepresentation by Defendants and cannot cure this failure. As such, the tort claims should be dismissed.

3. CNA Fails to Allege Reasonable Reliance

Defendants also moved to dismiss the state law fraud claims on the ground that CNA failed to properly allege reasonable reliance on any misrepresentation or omission (of which there was none). In response, CNA asserts that nurse members refrained from looking for alternate employment opportunities earlier, and are thereby entitled to recover emotional distress damages. This contention, however, not only fails to establish a claim but perhaps even of greater importance, it further supports dismissal on the basis that CNA lacks associational standing to pursue such individualized claims and alleged emotional distress damages on behalf of these

[6] This Court granted an Order approving such *ex parte* relief on an expedited basis. *Request for Judicial Notice in support of Debtors' Reply in support of Motion to Dismiss Complaint under Rule 12(b), with Prejudice* Ex. 1 [Docket No. 3679]. However, CNA had the opportunity, and was entitled, to object to such relief even after the issuance of such order. CNA brought no such challenge.

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

persons. (Opp. at 29; Motion to Dismiss at 26-27.) The fact that CNA does not dispute this point in its Opposition is telling.

Moreover, CNA cannot establish reasonable reliance because it was on perpetual notice of the possibility that the SGM Sale would not close, not solely because of the public record, but because of its active participation and receipt of constant updates regarding the status of the SGM Sale. (Motion to Dismiss at 31:17-28, 32:1-13.) Indeed, CNA *admits* that Defendants affirmatively apprised CNA and the nurses that "it was possible the sale would be unsuccessful," and that "CNA and the nurses *knew that it was possible that the sale might fall through, and that the hospital might shutdown*…" (Opp. at 31:13-15, 34:11-13 [emphasis added].) Contrary to CNA's assertion, reasonable reliance can and should be decided at the pleadings stage, given the uncontroverted record in the Bankruptcy Court proceedings. *See All. Mortg. Co. v. Rothwell,* 10 Cal. 4th 1226, 1239 (1995) ("[W]hether a party's reliance was justified may be decided as a matter of law if reasonable minds can come to only one conclusion based on the facts.").

4. CNA's Claim for Negligent Misrepresentation Fails

In addition to the foregoing, Defendants' Motion to Dismiss argued that a claim for negligent misrepresentation requires an affirmative representation. (Motion to Dismiss at 33:4-12); *see also Oushana v. Lowe's Home Ctrs., LLC,* No. 1:16-cv-01782-AWI-SAB, 2017 WL 2417198, at *6 (providing that claims for negligent misrepresentation, as opposed to intentional misrepresentation "require[] a positive assertion" and "omissions - that is, nondisclosures - cannot give rise to liability for negligent misrepresentation") (internal citations omitted); *Lopez v. Nissan N. Am., Inc.*, 201 Cal. App. 4th 572, 596 (2011) ("A negligent misrepresentation claim 'requires a positive assertion,' not merely an omission."); *Wilson v. Century 21 Great W. Realty*, 15 Cal. App. 4th 298, 306 (1993) ("Negligent misrepresentation is a species of fraud or deceit specifically requiring a 'positive assertion'"). CNA does not address this point in its Opposition, and does not respond to this legal authority. Given that CNA is pursuing only a theory based on alleged omission[s] by the Defendants, CNA's claim for negligent misrepresentation must fail as a matter of law.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
(213) 623-9300

IV. CONCLUSION

For the foregoing reasons and the reasons set forth in Debtors' Points and Authorities in support of its Motion to Dismiss, the Bankruptcy Court should dismiss CNA's Adversary Proceeding for failure to state a claim, with prejudice and without leave to amend and for all other relief that Bankruptcy Court may find warranted by law or equity.

Dated: May 22, 2020

DENTONS US LLP
SAMUEL R. MAIZEL
SAM J. ALBERTS
SONIA R. MARTIN
TANIA M. MOYRON

By: */s/ Tania M. Moyron*
Tania M. Moyron

Attorneys for Verity Health Systems of California, Inc., *et al.*

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300