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M.D., KPC Healthcare Holdings, Inc., KPC Health Plan  
Holdings, Inc., KPC Healthcare, Inc., and KPC Global  
Management, LLC and Counter-Plaintiff Strategic  
Global Management, Inc.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

In re  
VERITY HEALTH SYSTEM OF  
CALIFORNIA, INC., *et al.*,  
  
Debtors and Debtors in Possession.

Case No. 2:20-CV-00613-DSF

Related to District Court Appeals: Case  
Nos.: 2:19-cv-10352-DSF; 2:19-cv-  
10354-DSF; and 2:19-cv-10356-DSF)

Lead Chapter 11 Bankr. Case 2:18-bk-  
20151-ER

Jointly Administered With:

- ☐ 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

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-20172-ER

DEFENDANTS' FIRST AMENDED ANSWER TO PLAINTIF

STRATEGIC GLOBAL MANAGEMENT, INC.'S C

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- ☐ Affects St. Francis Medical Center of Lynwood Foundation  
☐ Affects St. Vincent Foundation  
☐ Affects St. Vincent Dialysis Center, Inc.  
☐ Affects Seton Medical Center Foundation  
☐ Affects Verity Business Services  
☐ Affects Verity Medical Foundation  
☐ Affects Verity Holdings, LLC  
☐ Affects De Paul Ventures, LLC  
☐ Affects De Paul Ventures – San Jose ASC, LLC

Debtors and Debtors in Possession.

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

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.\_

STRATEGIC GLOBAL MANAGEMENT, INC., a California corporation,

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

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

**DEFENDANTS' FIRST AMENDED ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT AND STRATEGIC GLOBAL MANAGEMENT, INC.'S FIRST AMENDED COUNTERCLAIMS**

**[JURY TRIAL DEMANDED]**

1 Counter-Plaintiff,

2 v.

3 VERITY HEALTH SYSTEM OF  
4 CALIFORNIA, INC., a California  
5 nonprofit public benefit corporation, ST.  
6 VINCENT MEDICAL CENTER, a  
7 California nonprofit public benefit  
8 corporation, ST. VINCENT DIALYSIS  
9 CENTER, INC., a California nonprofit  
10 public benefit corporation, and ST.  
11 FRANCIS MEDICAL CENTER, a  
12 California nonprofit public benefit  
13 corporation, SETON MEDICAL  
14 CENTER, a California nonprofit public  
15 benefit corporation, and VERITY  
16 HOLDINGS, LLC, a California limited  
17 liability company,

18 Counter-Defendants.

**ANSWER**

Defendants Strategic Global Management, Inc. (“SGM”) Kali P. Chaudhuri, M.D., KPC Healthcare Holdings, Inc., KPC Health Plan Holdings, Inc., KPC Healthcare, Inc., and KPC Global Management, LLC (“Defendants”) hereby provides this First Amended answer to the First Amended Complaint (“FAC”) filed by Plaintiffs Verity Health System of California, Inc., St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., St. Francis Medical Center, Seton Medical Center, and Verity Holdings, LLC (“Plaintiffs” or “VHS”) and state as follows:

1. Defendants assert that the allegations in Paragraph 1 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants admit that the District Court has jurisdiction over this proceeding.

2. Defendants assert that the allegations in Paragraph 2 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 2.

3. Admitted that Plaintiffs’ FAC concerns the Asset Purchase Agreement (“APA”) dated January 9, 2019. The APA speaks for itself. Defendants assert that the remaining allegations in Paragraph 3 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the remaining allegations in Paragraph 3.

4. SGM asserts that the allegations in Paragraph 4 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants admit that venue is proper in the United States District Court for the Central District of California.

5. Defendants assert that the allegations in Paragraph 5 state legal conclusions and therefore do not require a response. To the extent that a response is required, Defendants deny the allegations in Paragraph 5. However, Defendants do not consent to the entry of final orders or judgments by the bankruptcy court.

1           6. Defendants admit that Plaintiff VHS holds itself out as a nonprofit public  
2 benefit corporation located at 601 South Figueroa Street, Suite 4050, Los Angeles,  
3 California. Defendants lack sufficient information to admit or deny the truth or falsity  
4 of the remaining allegations of Paragraph 6, and therefore deny the same.

5           7. Defendants admit that Plaintiff St. Vincent held itself out as a California  
6 nonprofit corporation located at 601 South Figueroa Street, Suite 4050, Los Angeles,  
7 California. Defendants lack sufficient information to admit or deny the truth or falsity  
8 of the remaining allegations of Paragraph 7, and therefore deny the same.

9           8. Defendants admit that Plaintiff St. Francis holds itself out as a California  
10 nonprofit public benefit corporation located at 3630 East Imperial Highway in  
11 Lynwood, California. Defendants lack sufficient information to admit or deny the truth  
12 or falsity of the remaining allegations of Paragraph 8, and therefore deny the same.

13           9. Defendants admit that Plaintiff Seton holds itself out as a nonprofit public  
14 benefit corporation with two hospitals located at 1900 Sullivan Avenue in Daly City,  
15 California and at 600 Marine Boulevard, Moss Beach, California. Defendants lack  
16 sufficient information to admit or deny the truth or falsity of the remaining allegations  
17 of Paragraph 9, and therefore deny the same.

18           10. Defendants admit that Plaintiff Verity Holding holds itself out as a  
19 California limited liability company, located at 1850 Sullivan Avenue in Daly City,  
20 California. Defendants lack sufficient information to admit or deny the truth or falsity  
21 of the remaining allegations of Paragraph 10, and therefore deny the same.

22           11. Defendants deny any suggestion that the defendants named in the FAC  
23 are alter egos of one another. Defendants admit that KPC Global Management, LLC  
24 provides management services to the hospitals. Defendants also admit that a defendant  
25 owns Victor Valley Global Medical Center, Hemet Community Medical Center, and  
26 Menifee Valley Medical Center. Except as stated herein, the allegations in Paragraph  
27 11 are denied.  
28

1           12.     Admitted that SGM is a California corporation and that Dr. Kali P.  
2 Chaudhuri is the majority (or sole) shareholder of SGM. Dr. Kali P. Chaudhuri is  
3 SGM's Chief Executive Officer and William Thomas is its Secretary. Defendants also  
4 admit that SGM is the contracting party in the Asset Purchase Agreement. The address  
5 alleged for SGM is correct. The legal filings described in the paragraph speak for  
6 themselves. Except as stated herein, Defendants deny the allegations in Paragraph 12.

7           13.     Admitted that Kali P. Chaudhuri, M.D. is a resident of Hemet, California  
8 and that Dr. Chaudhuri has had many successes in his professional endeavors.  
9 Defendants deny that the remaining allegations of Paragraph 13 relating to the contents  
10 of the website are relevant to this matter or of legal significance. To the extent that a  
11 further response is required, Defendants deny the remaining allegations in Paragraph  
12 13.

13           14.     Defendants admit that KPC Healthcare Holdings, Inc. is a California  
14 Corporation. Dr. Kali P. Chaudhuri is its Chief Executive Officer, Kali Priyo  
15 Chaudhuri is its Chief Financial Officer, and William Thomas is its secretary. KPC  
16 Healthcare Holdings is located at 9 KPC Parkway, Suite 301, in Corona, CA, but that  
17 is not the same campus as the hospital Orange County Global Medical Center. Except  
18 as stated herein, Defendants deny the allegations in Paragraph 14.

19           15.     KPC Healthcare, Inc. is a Nevada Corporation. KPC Healthcare, Inc. is  
20 owned by KPC Healthcare Holdings, Inc., which is owned by an Employee Stock  
21 Ownership Plan ("ESOP"). Neither Dr. Chaudhuri nor SGM hold any ownership  
22 interest in the ESOP. KPC Healthcare, Inc.'s CEO is Mr. Baronoff and Mr. Thomas is  
23 its secretary. The address alleged is correct. The allegations in Paragraph 15 are denied  
24 except as stated herein.

25           16.     KPC Health Plan Holdings, Inc. is a California corporation in which Dr.  
26 Chaudhuri is a majority or sole shareholder. Dr. Chaudhuri is also its CEO, Mr.  
27 Thomas is its secretary, and Kali Priyo Chaudhuri is its CFO. The address alleged is  
28 correct.



1           17.   Admitted that KPC Global Management, LLC is a California limited  
2 liability company and that Dr. Kali P. Chaudhuri is a member of KPC Global  
3 Management, LLC. The address alleged is correct.

4           18.   Defendants assert that the allegations in Paragraph 18 state legal  
5 conclusions and therefore do not require a response. To the extent that a response is  
6 required, Defendants deny the allegations in Paragraph 18.

7           19.   Defendants assert that the allegations in Paragraph 19 state legal  
8 conclusions and therefore do not require a response. To the extent that a response is  
9 required, Defendants deny the allegations in Paragraph 19.

10          20.   Denied.

11          21.   Defendants assert that the allegations in Paragraph 21 state legal  
12 conclusions and therefore do not require a response. To the extent that a response is  
13 required, Defendants deny the allegations in Paragraph 21.

14          22.   Defendants assert that the allegations in Paragraph 22 state legal  
15 conclusions and therefore do not require a response. To the extent that a response is  
16 required, Defendants deny the allegations in Paragraph 22.

17          23.   Defendants assert that the allegations in Paragraph 23 state legal  
18 conclusions and therefore do not require a response. To the extent that a response is  
19 required, Defendants deny the allegations in Paragraph 23.

20          24.   Defendants assert that the allegations in Paragraph 24 state legal  
21 conclusions and therefore do not require a response. To the extent that a response is  
22 required, Defendants deny the allegations in Paragraph 24.

23          25.   Denied.

24          26.   Defendants assert that the allegations in Paragraph 26 state legal  
25 conclusions and therefore do not require a response. To the extent that a response is  
26 required, Defendants deny the allegations in Paragraph 26.

27          27.   Defendants lack sufficient information to admit or deny the truth or falsity  
28 of the allegations of Paragraph 27, and therefore deny the same.

1           28. Defendants lack sufficient information to admit or deny the truth or falsity  
2 of the allegations of Paragraph 28, and therefore deny the same.

3           29. Defendants lack sufficient information to admit or deny the truth or falsity  
4 of the allegations of Paragraph 29, and therefore deny the same.

5           30. Defendants lack sufficient information to admit or deny the truth or falsity  
6 of the allegations of Paragraph 30, and therefore deny the same.

7           31. Defendants lack sufficient information to admit or deny the truth or falsity  
8 of the allegations of Paragraph 31, and therefore deny the same.

9           32. Defendants lack sufficient information to admit or deny the truth or falsity  
10 of the allegations of Paragraph 32, and therefore deny the same.

11           33. Defendants lack sufficient information to admit or deny the truth or falsity  
12 of the allegations of Paragraph 33, and therefore deny the same.

13           34. Defendants lack sufficient information to admit or deny the truth or falsity  
14 of the allegations of Paragraph 34, and therefore deny the same.

15           35. Defendants lack sufficient information to admit or deny the truth or falsity  
16 of the allegations of Paragraph 35, and therefore deny the same.

17           36. Defendants lack sufficient information to admit or deny the truth or falsity  
18 of the allegations of Paragraph 36, and therefore deny the same.

19           37. Defendants lack sufficient information to admit or deny the truth or falsity  
20 of the allegations of Paragraph 37, and therefore deny the same.

21           38. Admitted.

22           39. Defendants lack sufficient information to admit or deny the truth or falsity  
23 of the allegations of Paragraph 39, and therefore deny the same.

24           40. Admitted that Plaintiffs agreed to the APA. The APA speaks for itself.  
25 Defendants lack sufficient information to admit or deny the truth or falsity of the  
26 remaining allegations of Paragraph 40, and therefore deny the same.

27           41. Admitted that SGM made an offer, dated August 13, 2018, to purchase  
28 certain of Plaintiffs' assets in the bankruptcy proceedings. The content of the offer



1 speaks for itself. Except as stated herein, Defendants deny the allegations in Paragraph  
2 41.

3 42. Defendants admit that SGM's offer was made in good faith. To the extent  
4 that a further response is required, Defendants deny the allegations in Paragraph 42.

5 43. Admitted that on December 3, 2018, Mr. Thomas provided to James  
6 Moloney a letter regarding Dr. Kali P. Chaudhuri's relationship with his personal  
7 financial institution and certain available liquidity. Defendants assert that the  
8 remaining allegations in Paragraph 43 state legal conclusions and therefore do not  
9 require a response. To the extent that a further response is required, Defendants deny  
10 the remaining allegations in Paragraph 43.

11 44. Admitted that SGM's representatives met with Plaintiffs' representatives  
12 at various points to discuss the transaction described in the parties' Asset Purchase  
13 Agreement. Except as stated herein, Defendants deny the allegations in Paragraph 44.

14 45. Admitted that SGM executed the Asset Purchase Agreement on or about  
15 January 8, 2019. Defendants lack sufficient information to admit or deny the truth or  
16 falsity of the remaining allegations of Paragraph 45, and therefore deny the same.

17 46. Denied that SGM "was not serious about closing" or that it was "not able  
18 to close the Sale transaction in accordance with the APA at the purchase price" at the  
19 time it entered into the APA. Defendants lack sufficient information to admit or deny  
20 the truth or falsity of the remaining hypothetical allegations of Paragraph 46, and  
21 therefore deny the same.

22 47. Defendants assert that the Asset Purchase Agreement speaks for itself and  
23 that the remaining allegations in Paragraph 47 state legal conclusions and therefore do  
24 not require a response. To the extent that a further response is required, Defendants  
25 deny the remaining allegations in Paragraph 47.

26 48. Admitted that Plaintiffs filed a motion with that title on January 17, 2019.  
27  
28

1           49.   Admitted that the bankruptcy court held a hearing on February 6, 2019.  
2   The remaining allegations in Paragraph 49 state legal conclusions and therefore do not  
3   require a response. The record from that hearing speaks for itself.

4           50.   The record from the February 6, 2019 hearing speaks for itself. Admitted  
5   that APA Section 8.6 was intended to benefit SGM. Defendants assert that the Asset  
6   Purchase Agreement speaks for itself and that the remaining allegations in Paragraph  
7   50 state legal conclusions and therefore do not require a response. To the extent that a  
8   further response is required, Defendants deny the remaining allegations in Paragraph  
9   50.

10          51.   Admitted that the bankruptcy court held a hearing on February 19, 2019  
11   on the Sale and Bidding Procedures Motion referenced in Paragraph 51. Defendants  
12   assert that the remaining allegations in Paragraph 51 state legal conclusions and  
13   therefore do not require a response. To the extent that a further response is required,  
14   Defendants deny the remaining allegations in Paragraph 51.

15          52.   Defendants admit that Mr. Thomas sent emails to Mr. Moloney. The  
16   content of those communications speak for themselves.

17          53.   Admitted that Plaintiffs declared SGM the “winning bidder” under the  
18   APA. Defendants lack sufficient information to admit or deny the truth or falsity of the  
19   remaining allegations of Paragraph 53, and therefore deny the same.

20          54.   Admitted that the bankruptcy court entered the Sale Order on or about  
21   May 2, 2019.

22          55.   Defendants assert that the Sale Order and the Asset Purchase Agreement  
23   speak for themselves and that the remaining allegations in Paragraph 55 state legal  
24   conclusions and therefore do not require a response. To the extent that a response is  
25   required, Defendants deny the remaining allegations in Paragraph 55.

26          56.   Defendants assert that the allegations in Paragraph 56 state legal  
27   conclusions and therefore do not require a response. Any such filings speak for  
28

1 themselves. To the extent that a further response is required, Defendants deny the  
2 remaining allegations in Paragraph 56.

3 57. The content of the website speaks for itself. To the extent that a further  
4 response is required, Defendants deny the remaining allegations in Paragraph 57.

5 58. The content of the website speaks for itself. To the extent that a further  
6 response is required, Defendants deny the remaining allegations in Paragraph 58.

7 59. Denied.

8 60. Denied.

9 61. Defendants lack sufficient information to admit or deny the truth or falsity  
10 of the allegations of Paragraph 61, and therefore deny the same.

11 62. Defendants assert that the allegations in Paragraph 62 state legal  
12 conclusions and therefore do not require a response. To the extent that a response is  
13 required, Defendants state that they lack sufficient information to admit or deny the  
14 truth or falsity of the allegations of Paragraph 62, and therefore deny the same.

15 63. Defendants assert that the allegations in Paragraph 63 state legal  
16 conclusions and therefore do not require a response. Plaintiffs' filings speak for  
17 themselves. To the extent that a response is required, Defendants state that they lack  
18 sufficient information to admit or deny the truth or falsity of the allegations of  
19 Paragraph 63, and therefore deny the same.

20 64. Defendants assert that the allegations in Paragraph 64 state legal  
21 conclusions and therefore do not require a response. To the extent that a response is  
22 required, Defendants deny the remaining allegations in Paragraph 64.

23 65. Admitted that APA Section 8.6 was a condition on SGM's obligation to  
24 close in the APA and was for SGM's benefit. Defendants assert that the Asset  
25 Purchase Agreement speaks for itself and that the remaining allegations in Paragraph  
26 65 state legal conclusions and therefore do not require a response.

1           66. Denied that Plaintiffs satisfied APA Section 8.6. To the extent that a  
2 further response is required, Defendants deny the remaining allegations in Paragraph  
3 66.

4           67. Defendants admit that Plaintiffs requested the Attorney General's consent  
5 to the sale. The content of their filings speak for themselves. Defendants assert that the  
6 remaining allegations in Paragraph 67 state legal conclusions and therefore do not  
7 require a response.

8           68. Admitted that Deputy Attorney General Scott Chan held public hearings  
9 at the hospitals during the week of August 26, 2019. Defendants deny the remaining  
10 allegations of Paragraph 68.

11           69. Admitted that Mr. Baronoff spoke at the August 26, 2019 Attorney  
12 General Public Meeting. The record from the hearing speaks for itself. To the extent  
13 that a further response is required, Defendants deny the remaining allegations in  
14 Paragraph 69.

15           70. Admitted that Mr. Baronoff spoke at the August 27, 2019 Attorney  
16 General Public Meeting. The record from the hearing speaks for itself. To the extent  
17 that a further response is required, Defendants deny the remaining allegations in  
18 Paragraph 70.

19           71. Admitted that Mr. Baronoff spoke at the August 29, 2019 Attorney  
20 General Public Meeting. The record from the hearing speaks for itself. To the extent  
21 that a further response is required, Defendants deny the remaining allegations in  
22 Paragraph 71.

23           72. Admitted that the "Additional Conditions" sought by the Attorney  
24 General were materially different than those SGM contractually agreed to in the APA.  
25 The content of Plaintiffs' court filings speak for themselves.

26           73. Defendants assert that the allegations in Paragraph 73 state legal  
27 conclusions and therefore do not require a response.  
28

1           74. Defendants assert that the allegations in Paragraph 74 state legal  
2 conclusions and therefore do not require a response.

3           75. Defendants admit that SGM objected to the proposed order. Defendants  
4 assert that the remaining allegations in Paragraph 75 state legal conclusions and  
5 therefore do not require a response.

6           76. Defendants assert that the allegations in Paragraph 76 state legal  
7 conclusions and therefore do not require a response. However, admitted that the  
8 bankruptcy court issued an order on November 14, 2019. Denied that the order has any  
9 force and effect because it was vacated by the United States District Court for the  
10 Central District of California.

11           77. Admitted that the bankruptcy court issued an order on November 14,  
12 2019, but denied that the order has any force and effect because it was vacated by the  
13 United States District Court for the Central District of California. Defendants also deny  
14 any suggestion that Plaintiffs satisfied the condition stated in section 8.6 of the APA.  
15 The contents of the APA speaks for itself.

16           78. Denied.

17           79. Admitted that APA Section 8.7 was intended to benefit SGM. Denied that  
18 Section 8.7 merely required that Plaintiffs “secure transfer of Medicare and Medi-Cal  
19 Provider Agreements to SGM.” Section 8.7 required Plaintiffs to enter into *settlement*  
20 *agreements* with the Centers for Medicare and Medicaid Services and California  
21 Department of Health Care Services that obtained the full satisfaction, discharge, and  
22 release of *any claims* under the Medicare or Medi-Cal provider agreements, *whether*  
23 *known or unknown*, that CMS or DHCS, as applicable, has against the Plaintiffs or  
24 SGM. Defendants assert that the remaining allegations in Paragraph 79 state legal  
25 conclusions and therefore do not require a response. The exact contents of the APA  
26 also speaks for itself. Defendants deny that Plaintiffs satisfied the condition stated in  
27 section 8.7 of the APA. To the extent that a further response is required, Defendants  
28 deny the remaining allegations in Paragraph 79.

1           80.    Denied.

2           81.    Denied.

3           82.    Denied.

4           83.    Denied.

5           84.    Defendants admit that, despite Plaintiffs' breaches and failures to satisfy  
6 the conditions discussed herein, Defendants attempted to resolve the disputes so a sale  
7 could proceed. To the extent that a further response is required, Defendants deny the  
8 remaining allegations in Paragraph 84.

9           85.    Defendants assert that the allegations in Paragraph 85 state legal  
10 conclusions and therefore do not require a response. The APA speaks for itself.  
11 Further denied that Plaintiffs satisfied all conditions precedent to closing by November  
12 18, 2019 or at any time thereafter. Defendants also deny that the order entered by the  
13 bankruptcy court, which has been vacated, has any significance. To the extent that a  
14 further response is required, Defendants deny the remaining allegations in Paragraph  
15 85.

16          86.    Denied.

17          87.    Admitted that Plaintiffs' counsel sent a letter to SGM on November 20,  
18 2019 falsely alleging that the conditions to close under the APA had been satisfied.  
19 Defendants deny that Plaintiffs had satisfied their contractual obligations under the  
20 APA or conditions to closing at this, or any other, time. Except as stated herein,  
21 Defendants deny the allegations in Paragraph 87.

22          88.    Denied.

23          89.    Denied.

24          90.    Admitted that SGM sent Plaintiffs letters from Gary Klausner, Esq. of  
25 Levene, Neale, Bender, Yoo & Brill L.L.P. and Robert W. Lundy, Jr. of Hooper,  
26 Lundy & Bookman, P.C. (with enclosures), setting forth Plaintiffs' failure to satisfy  
27 their obligations and the conditions precedent under the APA required to close the sale.  
28 Defendants deny the remaining allegations in Paragraph 90.



1           91. Admitted that SGM filed a Reservation of Rights in advance of the  
2 November 26, 2019 status conference. Defendants further deny that the bankruptcy  
3 court's statements made during the November 26, 2019 hearing have any force and  
4 effect because the bankruptcy court's order after that hearing was vacated by the  
5 United States District Court for the Central District of California. Defendants assert  
6 that the remaining allegations in Paragraph 91 state legal conclusions and therefore do  
7 not require a response. To the extent that a further response is required, Defendants  
8 deny the remaining allegations in Paragraph 91.

9           92. Defendants assert that the allegations in Paragraph 92 state legal  
10 conclusions and therefore do not require a response. The record of the November 26,  
11 2019 Status Conference and the contents of the APA speak for themselves. Defendants  
12 deny that Plaintiffs satisfied the conditions in section 8.7 of the APA. To the extent  
13 that a further response is required, Defendants deny the remaining allegations in  
14 Paragraph 92.

15           93. Admitted that the bankruptcy court issued an order on November 27, 2019  
16 [Docket No. 3724]. Defendants assert that the allegations in Paragraph 93 state legal  
17 conclusions and therefore do not require a response. To the extent that a response is  
18 required, Defendants deny the remaining allegations in Paragraph 93. Defendants  
19 further deny that the bankruptcy court's Memorandum of Decision and Order have any  
20 force and effect because the bankruptcy court's November 27, 2019 Order was vacated  
21 by the United States District Court for the Central District of California.

22           94. Admitted that the parties exchanged subsequent communications  
23 concerning Plaintiffs' failure to satisfy their obligations and conditions precedent  
24 under the APA. The content of any written communications speak for themselves.  
25 Defendants deny the remaining allegations in Paragraph 94.

26           95. Admitted that the parties exchanged subsequent communications  
27 concerning Plaintiffs' failure to satisfy their obligations and conditions precedent  
28

1 under the APA. The content of any written communications speak for themselves.  
2 Defendants deny the remaining allegations in Paragraph 95.

3 96. Admitted that SGM filed notices of appeal [Docket Nos. 3726 & 3727] on  
4 November 29, 2019. SGM's appeals resulted in the vacatur of the bankruptcy court's  
5 orders from which SGM appealed. Defendants deny the remaining allegations in  
6 Paragraph 96.

7 97. Defendants deny that they failed to participate in any required meetings.  
8 Indeed, Plaintiffs had not satisfied their obligations and conditions to SGM's  
9 performance. To the extent a further response is required, Defendants deny the  
10 remaining allegations in Paragraph 97.

11 98. Admitted that the parties exchanged subsequent communications  
12 concerning Plaintiffs' failure to satisfy their obligations and conditions precedent  
13 under the APA. The content of any written communications speak for themselves.  
14 Defendants deny the remaining allegations in Paragraph 98.

15 99. Admitted that the parties had subsequent discussions concerning  
16 Plaintiffs' failure to satisfy their obligations and conditions precedent under the APA.  
17 The content of any written communications speak for themselves. Defendants deny the  
18 remaining allegations in Paragraph 99.

19 100. Admitted that the parties had subsequent discussions concerning  
20 Plaintiffs' failure to satisfy their obligations and conditions precedent under the APA  
21 (the contents of which speak for themselves) and that the Plaintiffs wrongfully sent a  
22 notice of default to SGM dated December 5, 2019. Defendants deny the remaining  
23 allegations in Paragraph 100.

24 101. Defendants assert that the allegations in Paragraph 101 state legal  
25 conclusions and therefore do not require a response. The stipulations and order speak  
26 for themselves. To the extent that a response is required, Defendants deny the  
27 remaining allegations in Paragraph 101.  
28

1           102. Defendants assert that the allegations in Paragraph 102 state legal  
2 conclusions and therefore do not require a response. The stipulations and order speak  
3 for themselves. To the extent that a response is required, Defendants deny the  
4 remaining allegations in Paragraph 102.

5           103. Defendants admit that Plaintiffs' counsel sent a letter to SGM's counsel,  
6 Gary Klausner, on December 10, 2019. Defendants deny that the contents of that letter  
7 are true and correct.

8           104. Defendants admit that Plaintiffs' counsel sent a letter to SGM's counsel,  
9 Gary Klausner, on December 10, 2019. Defendants deny that the contents of that letter  
10 are true and correct.

11           105. Defendants admit that no party noticed or demanded a closing besides  
12 Plaintiffs' improper notice on November 20, 2019. The APA speaks for itself.  
13 Defendants assert that the remaining allegations in Paragraph 105 state legal  
14 conclusions and therefore do not require a response. To the extent that a response is  
15 required, Defendants deny the allegations in Paragraph 105.

16           106. Defendants deny that Plaintiffs remained prepared to close until  
17 December 27, 2019. Rather, Plaintiffs gave notice on December 17, 2019 that they  
18 were terminating the APA based on their false contention that SGM had breached by  
19 not closing by December 5, 2019. The APA speaks for itself. Defendants assert that the  
20 remaining allegations in Paragraph 106 state legal conclusions and therefore do not  
21 require a response. To the extent that a response is required, Defendants deny the  
22 remaining allegations in Paragraph 106.

23           107. Admitted that Plaintiffs' counsel sent a notice to SGM on December 17,  
24 2019 stating that Plaintiffs were terminating the APA based on their contention that  
25 Defendants had breached by not closing on December 5, 2019. Of course, this  
26 termination was improper because SGM had not breached the APA.

27           108. Defendants admit that no party noticed or demanded a closing besides  
28 Plaintiffs' improper notice on November 20, 2019. Defendants also admit that the sale

1 never closed and Plaintiffs wrongfully terminated the agreement. Defendants deny the  
2 remaining allegations in Paragraph 108.

3 109. Admitted that SGM's representatives communicated with Plaintiffs'  
4 representatives after Plaintiffs' wrongful termination of the APA. SGM admits that it  
5 made offers to purchase Seton in February 2020.

6 110. Admitted that SGM's representatives communicated with Plaintiffs'  
7 representatives after Plaintiffs' wrongful termination of the APA. SGM states that the  
8 content of these communications is protected under Federal Rule of Evidence 408.

9 111. Admitted that SGM's representatives communicated with Plaintiffs'  
10 representatives after Plaintiffs' wrongful termination of the APA. SGM admits that it  
11 made offers to purchase Seton in February 2020. To the extent a further response is  
12 required, Defendants deny the remaining allegations in Paragraph 111.

13 112. Admitted that Mr. Baronoff attended the March 6, 2020 meeting of the  
14 San Mateo County Board of Supervisors. The hearing record speaks for itself.

15 113. In response to the first sentence of paragraph 113, Defendants restate and  
16 reallege their responses to all paragraphs above as if set forth fully herein. In response  
17 to the remaining allegations, denied.

18 114. Denied.

19 Defendants restate and reallege their responses to all paragraphs above as if set  
20 forth fully herein.

21 115. Denied.

22 116. Denied.

23 117. Denied.

24 118. Denied.

25 Defendants restate and reallege their responses to all paragraphs above as if set  
26 forth fully herein.

27 119. Denied.

28 120. Denied.

1 121. Denied.

2 122. Denied.

3 123. Denied.

4 Defendants restate and reallege their responses to all paragraphs above as if set  
5 forth fully herein.

6 124. Denied.

7 125. Denied.

8 126. Denied.

9 127. Denied.

10 Defendants restate and reallege their responses to all paragraphs above as if set  
11 forth fully herein.

12 128. Defendants assert that the allegations in Paragraph 128 state legal  
13 conclusions and therefore do not require a response. To the extent that a response is  
14 required, Defendants deny the allegations in Paragraph 128.

15 129. Denied.

16 130. Denied.

17 131. Denied.

18 132. Denied.

19 **AFFIRMATIVE DEFENSES**

20 Without waiving or excusing the burden of proof of Plaintiffs, or admitting that  
21 Defendants have any burden of proof, Defendants hereby assert the following separate,  
22 additional, and alternative affirmative defenses.

23 **FIRST AFFIRMATIVE DEFENSE**

24 (Failure to State a Cause of Action)

25 Defendants allege that the FAC, and each and every alleged cause of action  
26 therein, fails to state facts sufficient to constitute a cause of action upon which relief  
27 can be granted.

1 **SECOND AFFIRMATIVE DEFENSE**

2 (Litigation Privilege)

3 Defendants allege that Plaintiffs' FAC is barred in whole or in part by  
4 California's Litigation Privilege codified in California Civil Code section 47(b) and are  
5 precluded by California's Constitution.

6 **THIRD AFFIRMATIVE DEFENSE**

7 (Failure to Mitigate Damages)

8 Defendants allege that Plaintiffs have failed, refused and/or neglected to  
9 mitigate or avoid the damages complained of in the FAC, if any.

10 **FOURTH AFFIRMATIVE DEFENSE**

11 (Laches)

12 Defendants allege that the FAC, and each and every alleged cause of action  
13 therein, are barred, in whole or in part, by the equitable doctrine of laches.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 (Estoppel)

16 Defendants allege that Plaintiffs are estopped by their conduct from asserting  
17 each of the causes of action upon which they seek relief.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 (Waiver)

20 Defendants allege that the FAC, and each and every alleged cause of action  
21 therein, are barred by the doctrine of waiver.

22 **SEVENTH AFFIRMATIVE DEFENSE**

23 (Unclean Hands)

24 Defendants allege that the FAC, and each and every alleged cause of action  
25 therein, are barred by the doctrine of unclean hands.

26 **EIGHTH AFFIRMATIVE DEFENSE**

27 (Consent)



1 Defendants allege that the FAC, and each and every alleged cause of action  
2 therein, are barred, in whole or in part, because Plaintiffs consented to the conduct  
3 about which they now complain.

4 **NINTH AFFIRMATIVE DEFENSE**

5 (No Damage / Unjust Enrichment)

6 Defendants allege that Plaintiffs have not suffered any losses and Defendants  
7 have not been unjustly enriched as a result of any action or inaction by Defendants or  
8 their agents. Plaintiffs are therefore not entitled to any disgorgement or restitution.

9 **TENTH AFFIRMATIVE DEFENSE**

10 (Avoidable Consequences)

11 Defendants allege that each purported cause of action in the FAC, or some of the  
12 causes of action, are barred, or recovery should be reduced, pursuant to the doctrine of  
13 avoidable consequences.

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 (No Punitive Damages)

16 Defendants allege that to the extent that Plaintiffs recover damages in this  
17 action, they cannot recover punitive damages.

18 **TWELFTH AFFIRMATIVE DEFENSE**

19 (Offset)

20 Without conceding that any act of Defendants caused damage to Plaintiffs in any  
21 respect, Defendants are entitled to offset against any judgment that may be entered for  
22 Plaintiffs.

23 **THIRTEENTH AFFIRMATIVE DEFENSE**

24 (Prior Breach by Plaintiffs)

25 Defendants' obligations, if any, were relieved by Plaintiffs' prior breach of the  
26 APA.

27  
28 **FOURTEENTH AFFIRMATIVE DEFENSE**

(Mistake)

Plaintiffs' claims are barred in whole or in part by the doctrine of mistake.

**RESERVATION OF RIGHTS**

Defendants hereby give notice that they intend to rely upon such other and further affirmative defenses as may become available during discovery in this action and reserve the right to amend their Answer to assert any such defenses. Discovery in this matter has not yet commenced and Defendants may uncover additional facts and/or evidence in support of these or other affirmative defenses.

**PRAYER**

Defendants pray for judgement against Plaintiffs, and each of them, on their First Amended Complaint as follows:

1. That Plaintiffs, and each of them, take nothing from their First Amended Complaint;
2. That the Court order Plaintiffs to return SGM's \$30 million deposit with interest thereon;
3. For attorneys' fees and costs of defense;
4. For such other and further relief as the Court deems is just and proper.

**SGM’S FIRST AMENDED COUNTERCLAIMS**

Defendant and Counter-Plaintiff Strategic Global Management, Inc. (“SGM”) hereby submits its First Amended Counter-Claim against Counter-Defendants Verity Health System of California, Inc., Verity Holdings, LLC, St. Francis Medical Center, St. Vincent Medical Center, St. Vincent Dialysis Center, Inc., and Seton Medical Center (collectively, “VHS”) and alleges as follows:

**OVERVIEW**

1. Before the instant litigation, VHS owned and operated four failing hospitals: St. Francis Medical Center in Lynwood, CA; St. Vincent Medical Center, in Los Angeles, CA; Seton Hospital in Daly City, CA; and Seton Medical Center Coastside in Moss Beach, CA. On August 31, 2018, VHS filed for Chapter 11 bankruptcy and sought to sell these hospitals’ assets, along with other hospital assets that it owned at that time.

2. In January 2019, SGM agreed to buy substantially all the assets of the four hospitals from VHS for a sale price of \$610 million, subject to certain adjustments (which could substantially reduce the purchase price), via a stalking horse bid, in an effort to stem the losses, revitalize the hospitals, and allow them to continue to serve their communities. After applying its business strategies, SGM expected to obtain a substantial profit from the purchase. To that end, in or about January 2019, SGM and VHS entered into an Asset Purchase Agreement (“APA”) that set forth the parties’ rights and obligations in connection with the sale. SGM made a \$30 million good faith deposit upon entering the APA. VHS was obligated to return the deposit if it materially breached the APA.

3. Unbeknownst to SGM, VHS’s operation of the hospitals in 2019 was nothing short of disastrous. Indeed, after wrongfully terminating the APA with SGM, VHS filed a motion to close St. Vincent. In that motion, VHS disclosed that its mismanagement of St. Vincent has caused the hospital to sustain financial losses of

1 “more than \$65 million in fiscal year 2019 alone,” and that the hospital’s “operating  
2 losses are significant and unsustainable.”

3 4. But, VHS not only mismanaged its hospitals. After entering the APA,  
4 SGM also discovered that VHS had been illegally operating St. Vincent in violation of  
5 California law. When SGM confronted VHS with evidence of its violations, VHS did  
6 not even *attempt* to address the deficiencies. Rather, VHS denied the deficiencies  
7 existed and then falsely represented to SGM that it had satisfied all of its obligations  
8 under the APA and wrongfully demanded SGM close the sale immediately.

9 5. Specifically, despite being well aware that it had not satisfied the APA’s  
10 conditions precedent, including the conditions in sections 8.6 and 8.7 of the APA, VHS  
11 falsely represented that they had satisfied the conditions with the goal of: (1) forcing  
12 SGM to complete a sale without receiving the full consideration it was promised  
13 and/or (2) manufacturing a false claim that SGM breached an obligation to close as a  
14 pretext to terminate the APA and retain SGM’s good faith \$30 million deposit, and (3)  
15 preventing SGM from exercising an option to terminate the APA if the sale did not  
16 close by December 31, 2019. Specifically, on November 20, 2019, VHS sent SGM a  
17 letter falsely representing that VHS had satisfied the conditions and demanding that  
18 SGM close on the sale on December 5, 2019. VHS did so, *despite* the fact that it had  
19 not complied with its contractual obligations and the conditions precedent to closing  
20 the sale, including, but not limited to: obtaining court authorization to transfer VHS’s  
21 Medicare and Medi-Cal provider agreements pursuant to settlement agreements with  
22 the Centers for Medicare and Medicaid Services (“CMS” for Medicare) and the  
23 California Department of Health Care Services (“DHCS” for Medi-Cal), respectively;  
24 failing to respond to building and safety code violations and seismic compliance; and  
25 other contractual obligations discussed below. VHS’s satisfaction of these obligations  
26 is not only contractually required, but also was essential to SGM’s successful operation  
27 of the four hospitals and provision of healthcare services to the public.  
28

6. Although SGM repeatedly informed VHS that VHS had not satisfied its obligations, VHS nevertheless continued its illegitimate effort to unjustly enrich itself on December 17, 2019 when it unilaterally announced that it was terminating the APA without returning SGM's \$30 million deposit.

7. In sum, VHS: (1) failed and refused to honor its contractual obligations to SGM and repudiated the conditions in the APA; (2) nevertheless demanded that SGM immediately close the sale; (3) wrongfully terminated and repudiated its obligations under the APA; and (4) wrongfully retained SGM's \$30 million deposit and interest.

### **JURISDICTION AND VENUE**

8. The United States District Court for the Central District of California has subject matter jurisdiction over SGM's Counter-Claim pursuant to 28 U.S.C. §1334 and pursuant to the District Court's Order Granting Motion to Withdraw Reference, entered on March 5, 2020.

9. Venue for this adversary proceeding is proper pursuant to 28 U.S.C. § 1409.

### **PARTIES**

10. Strategic Global Management, Inc. ("SGM") is a California corporation, with its principal place of business in Corona, California.

11. Verity Health Systems of California, Inc. is a California corporation with its principal place of business in Los Angeles, California.

12. Verity Holdings, LLC is a California limited liability company with its principal place of business located at 1850 Sullivan Avenue in Daly City, California.

13. St. Francis Medical Center is a California corporation with its principal place of business in Los Angeles, California. St. Francis engages in the business of the operation of the hospital known as St. Francis Medical Center, located at 3630 E. Imperial Highway, Lynwood, CA 90262, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Francis.

14. St. Vincent Medical Center and St. Vincent Dialysis Center, Inc. are California corporations with their principal place of business in Los Angeles, California. Before its closure, St. Vincent engaged in the business of the operation of the hospital known as St. Vincent Medical Center, located at 2131 W 3rd Street, Los Angeles, CA 90057, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by St. Vincent.

15. Seton Medical Center is a California corporation. Seton engages in the business of the operation of two general acute care hospitals consisting of: (i) the hospital known as Seton Medical Center, located at 1900 Sullivan Avenue, Daly City, CA 94015, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton and (ii) the hospital known as Seton Medical Center Coastside, located at 600 Marine Blvd, Moss Beach, CA 94038, including the hospital pharmacy, laboratory and emergency department as well as through the medical office buildings and clinics owned or operated by Seton.

## GENERAL ALLEGATIONS

16. On August 31, 2018, VHS filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) with the United States Bankruptcy Court for the Central District of California.

17. In or about January 2019, SGM and VHS entered into an Asset Purchase Agreement.

18. Pursuant to APA Section 1.2, SGM wired a \$30,000,000 deposit into VHS's bank account.

## I. THE APA'S KEY PROVISIONS.

19. The APA contains several key provisions governing the parties' conduct with respect to the sale. Several of these provisions are set forth below.



1           **A. The APA Conditions Closing on VHS's Satisfaction of Its Contractual**  
 2           **Obligations.**

3           1.     APA Section 1.3

4           20.    APA Section 1.3 conditions the closing of the transactions contemplated  
 5 by the APA on the parties' satisfaction of their obligations under APA Articles 7 and  
 6 8. Specifically, Section 1.3 states as follows:

7                   1.3 Closing Date. The consummation of the transactions  
 8 contemplated by this Agreement (the "Closing") shall take  
 9 place at 10:00 a.m. local time at the offices of Dentons US  
 10 LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA  
 11 90017-5704 (the day on which Closing actually occurs, the  
 12 "Closing Date") promptly but no later than ten (10) business  
 13 days *following the satisfaction or waiver of the conditions set*  
 14 *forth in ARTICLE 7 and ARTICLE 8*, other than those  
 15 conditions that by their nature are to be satisfied at Closing but  
 subject to fulfillment or waiver of those conditions. The  
 Closing shall be deemed to occur and to be effective as of  
 11:59 p.m. Pacific time on the Closing Date (the "Effective  
 Time").

16 (APA, § 1.3, emphasis added.). Thus, the APA expressly required VHS to satisfy the  
 17 conditions set forth in APA articles 7 and 8 as conditions precedent to demanding that  
 18 SGM close the sale.

19           21.    Article 8 of the APA also made clear that SGM had no obligation to close  
 20 the sale unless VHS had met all of its obligations and conditions precedent to closing  
 21 on or before the Closing Date.

22           2.     APA Section 8.4 – Performance of Covenants

23           22.    APA section 8.4 conditions the closing of the transaction upon VHS's  
 24 material performance and compliance with all of its other obligations, and covenants  
 25 before SGM would have an obligation to close the transaction.

26           Specifically, Section 8.4 states:

27                   8.4 Performance of Covenants. *Sellers shall have in all*  
 28 *material respects performed or complied with each and all of*  
*the obligations, covenants, agreements and conditions*

*required to be performed or complied with by Sellers on or prior to the Closing Date*; provided, however, this condition will be deemed to be satisfied unless (a) Sellers were given written notice of such failure to perform or comply and did not or could not cure such failure to perform or comply within fifteen (15) business days after receipt of such notice and (b) the respects in which such obligations, covenants, agreements and conditions have not been performed have had or would have a Material Adverse Effect.

(APA, § 8.4, emphasis added).

### 3. APA Section 4.6 – Conduct of the Business

23. APA section 4.6 required VHS to use commercially reasonable efforts to maintain the value of the hospitals and to comply with the law. Specifically, section 4.6 states:

4.6 Conduct of the Business. From the Signing Date until the Closing, or the earlier termination of this Agreement, without the prior written consent of Purchaser, Sellers shall, with respect to the ownership of the Assets and the operation of the Hospitals, use commercially reasonable efforts to, in each case except as would not have a Material Adverse Effect (except as otherwise noted):

(a) without regard to Material Adverse Effect, carry on Sellers' ownership of the Assets and the operation of the Hospitals consistent with past practice, but subject to the Bankruptcy Cases and Sellers' obligations and actions in connection therewith;

(b) maintain in effect the insurance and equipment replacement coverage with respect to the Assets;

(c) if and as permitted by the Bankruptcy Court, pay any bonuses payable under the Key Employee Retention Plan and Key Employee Incentive Plan of Sellers;

(d) maintain the Assets in materially the same condition as at present, ordinary wear and tear excepted;

(e) perform its obligations under all contracts with respect to the Assets in compliance with the Bankruptcy Code;

(f) following entry of the Sale Order, permit and allow reasonable access by Purchaser and its representatives (which shall include the right to send written materials, all of which shall be subject to Sellers' reasonable approval prior to delivery) to make offers of post-Closing employment to any of Sellers' personnel (including access by Purchasers and their representatives for the purpose of conducting open enrollment sessions for Purchasers' employee benefit plans and programs) and to establish relationships with physicians, medical staff and others having business relations with Sellers;

(g) with respect to material deficiencies, if any, cited by any governmental authority (other than the Attorney General of the State of California and other than with respect to Seismic requirements) or accreditation body in the most recent surveys conducted by each, cure or develop and timely implement a plan of correction that is acceptable to such governmental authority or such accreditation body;

(h) timely file or cause to be filed all material reports, notices and tax returns required to be filed and pay all required taxes as they come due;

(i) without regard to Material Adverse Effect, beginning on February 21, 2019 and in accordance with the Sellers' budget under their debtor in possession financing, timely pay any fees that are or become due and payable under QAF IV and QAF V;

(j) comply in all material respects with all Legal Requirements (including Environmental Laws) applicable to the conduct and operation of the Hospitals; and

(k) without regard to Material Adverse Effect, maintain all material approvals, permits and environmental permits relating to the Hospitals and the Assets.

(APA § 4.8). VHS breached this provision as set forth below.

1                   4.     APA Sections 2.8 & 2.10 Representations and Warranties with  
 2                   Respect to Compliance with Legal Requirements and  
 3                   Environmental Matters.

4           24.     Under APA Article 2, Sections 2.8 and 2.10, VHS warranted and  
 5     covenanted to SGM that the hospitals were in material compliance with all applicable  
 6     laws and environmental regulations. Specifically sections 2.8 and 2.10 state:

7                   Article 2: REPRESENTATIONS AND WARRANTIES OF  
 8                   SELLERS

9                   “Each Seller hereby represents, warrants and covenants to  
 10                  Purchaser, severally (and not jointly) with respect to such  
 11                  Seller that the following matters are true and correct as of the  
 12                  Signing Date...

13                 2.8 Compliance with Legal Requirements. Except as set forth  
 14                 in Schedule 2.8, to the knowledge of Sellers: each Seller, with  
 15                 respect to the operation of the Hospitals, is in material  
 16                 compliance with all applicable laws, statutes, ordinances,  
 17                 orders, rules, regulation, policies, guidelines, licenses,  
 18                 certificates, judgments or decrees of all judicial or  
 19                 governmental authorities (federal, state, local, foreign or  
 20                 otherwise) (collectively, “**Legal Requirements**”)...

21                 2.10 Environmental Matters... (b) Except as disclosed in  
 22                 Schedule 2.10(b), to the knowledge of Sellers, the operations  
 23                 of the Hospitals are not in material violation of any applicable  
 24                 limitations, restrictions, conditions, standards, prohibitions,  
 25                 requirements and obligations of Environmental Laws and  
 26                 related orders of any court or any other governmental  
 27                 authority.”

28                 5.     APA Section 8.6 – Attorney General Provisions

29           25.     A critical component of the Sale negotiations between VHS and SGM  
 30     was the need to anticipate and address, in the APA, the prospect that the California  
 31     Attorney General (“AG”), in evaluating the proposed sale to SGM, might attach  
 32     conditions that would impose costs on the purchaser that would effectively be “deal  
 33     killers.” To address those concerns, the parties negotiated Section 8.6 of the APA

1 (“Section 8.6”) to deal with what was termed “Additional Conditions.” The relevant  
 2 portion of Section 8.6 is below.

3       8.6 Attorney General Provisions . . . . In the event the CA AG  
 4 imposes conditions on the transactions contemplated by this  
 5 Agreement, or on Purchaser in connection therewith, which  
 6 are materially different than the Purchaser Approved  
 7 Conditions set forth on Schedule 8.6 (the “Additional  
 8 Conditions”), Sellers shall have the opportunity to file a  
 9 motion with the Bankruptcy Court seeking the entry of an  
 10 order (“Supplemental Sale Order”) finding that the Additional  
 11 Conditions are an “interest in property” for purposes of 11  
 12 U.S.C. § 363(f), and that the Assets can be sold free and clear  
 13 of the Additional Conditions without the imposition of any  
 14 other conditions, which would adversely affect the Purchaser  
 15 . . . . If Sellers determine not to seek such Supplemental Sale  
 16 Order, or fail to obtain such Supplemental Sale Order within  
 17 60 days of the Attorney General’s imposition of Additional  
 18 Conditions, Purchaser shall be entitled to terminate this  
 19 Agreement and receive the return of its Good Faith Deposit. ***If***  
 20 ***Sellers timely obtain such Supplemental Sale Order from the***  
 21 ***Bankruptcy Court or another court, Purchaser shall have a***  
 22 ***period of 21 business days from the entry of such order (the***  
 23 ***“Evaluation Period”)*** ***to determine, in the exercise of the***  
 24 ***Purchaser’s reasonable business judgment and in***  
 25 ***consultation with Purchaser’s financing sources, whether to***  
 26 ***proceed to consummate the transactions contemplated by***  
 27 ***this Agreement*** . . . . For the avoidance of doubt, if the Debtors  
 28 or any of the Consultation Parties dispute the reasonableness  
 of the exercise of the Purchaser’s business judgment, such  
 dispute shall be determined by the Bankruptcy Court only in  
 the context of an adversary proceeding. If, at the conclusion of  
 the Extended Evaluation Periods, such Supplemental Sale  
 Order has not become a final, non-appealable order and  
 Purchaser determines not to proceed, Purchaser shall have the  
 right within ten (10) business days after the conclusion of the  
 Extended Evaluation Periods to terminate this Agreement and  
 receive the return of its Good Faith Deposit . . . . For purposes  
 of this Section 8.6, “a final, non-appealable order” shall  
 include a Supplemental Sale Order (i) which has been affirmed  
 or the appeal of which has been dismissed by any appellate  
 court and for which the relevant appeal period has expired



(other than any right of appeal to the U.S. Supreme Court), or (ii) which has been withdrawn by the appellant. If the Supplemental Sale Order becomes a final, non-appealable order prior to the expiration of the Evaluation Period or, if applicable, the Extended Evaluation Periods, Purchaser shall consummate the Sale provided that all other conditions to closing have been satisfied . . . . For the avoidance of doubt, neither this provision, nor any of the rights granted to the Purchaser herein, shall constitute a waiver of any party in interest's right to argue that any appeal from the Sale Order should be dismissed on statutory, Constitutional or equitable mootness grounds.

(APA § 8.6, emphasis added).

26. Fundamental to SGM's agreement to the language of Section 8.6 was the creation of an "Evaluation Period" of 21 business days, which would start from the entry of the "Supplemental Sale Order." Because no one knew when they entered into the APA whether the bankruptcy court would enter a Supplemental Sale Order or what it would say, SGM required an "Evaluation Period" to ensure that it would not be obligated to close the transaction if, in the exercise of its reasonable business judgment, and after consultation with its funding sources, the Supplemental Sale Order was not satisfactory.

#### 6. APA Section 8.7 – Medicare and Medi-Cal Provider Agreements

27. APA Section 8.7 conditions SGM's obligation to close on Verity's transferring of its Medicare and Medi-Cal provider agreements pursuant to settlements with the Centers for Medicare and Medicaid Services and the California Department of Health Care Services. Specifically, Section 8.7 states:

8.7 Medicare and Medi-Cal Provider Agreements. 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; . . .*

(APA § 8.7, emphasis added).

7. Section 11.2 – Damages for Sellers’ Breach

28. In entering into the APA, the parties contemplated the scenario where, as here, VHS materially breached the APA. In such an instance, the parties agreed that VHS must return SGM’s \$30 million deposit and that SGM may also sue for damage and/or specific performance to recover for the harm caused by VHS’s material breach. Specifically, under APA Section 11.2, if VHS commits any material default under the APA, SGM is entitled to the return of its \$30 million dollar deposit and may pursue its legal rights and remedies against VHS.

11.2 Seller Default. If Sellers commit any material default under this Agreement, Purchaser shall have the right to demand and receive a refund of the Deposit, and Purchaser may, in addition thereto, pursue any rights or remedies that Purchaser may have under applicable law, including the right to sue for damages or specific performance.

(APA § 11.2). By including this provision in the APA, the parties intended and understood that SGM would have the right to demand and immediately receive the return of its \$30 million security deposit in the event that VHS materially breached the APA.

29. In addition to a VHS breach (which it did for the numerous reasons stated herein), SGM would have also been entitled to a return of the deposit if the agreement did not close by December 31, 2019. Section 9.1(i) states:

9.1 Termination. This Agreement may be terminated at any time prior to Closing:

...

(i) by either Purchaser or Sellers if the Closing has not occurred (other than through the failure of any party seeking to terminate this Agreement to comply fully with its obligations under this Agreement) on or before December 31, 2019

(APA § 9.1(i)). In other words, under the APA, SGM would always be entitled to a return of its deposit if it did not breach an obligation to close. The parties certainly did not intend in the APA that VHS could ever wrongfully terminate the contract and somehow retain SGM's \$30 million deposit.

## **II. VHS DEPLOYS ITS SCHEME TO FORCE A SALE AND BREACHES THE APA.**

30. Between January and the fall of 2019, SGM and VHS worked constructively towards a closing of the Sale under the APA. These efforts included, among others, SGM's: negotiation and ultimate agreements with six (6) labor unions to modify their respective collective bargaining agreements; analysis of hundreds of executory contracts, including those with health plans, medical practice groups, independent physician associations (IPAs), vendors and suppliers, to be assumed and assigned to SGM upon closing; and the drafting of numerous separate agreements, such as an interim management agreement and sale-leaseback agreement, which would need to be completed and put in place at the time of closing. To that end, SGM devoted substantial financial resources to hire consultants, attorneys, and other expert and in-house personnel to address these and a myriad of other issues.

31. In contrast, by the fall of 2019, VHS realized that it had not met its contractual obligations to SGM under at least Sections 8.6 and 8.7 of the APA. VHS also recognized that in light of the APA provision in section 9.1(i) allowing either party who was not in breach to terminate the APA without recourse if the sale had not closed as of December 31, 2019, VHS's failure to have satisfied all closing conditions would provide SGM, at a minimum, with an opportunity to terminate the APA on December 31 or renegotiate its terms. Thus, VHS developed a strategy to attempt to

1 manufacture a breach (albeit artificial) by SGM which would give VHS a pretext to  
 2 terminate the contract and keep SGM's \$30 million deposit and to allow VHS to  
 3 attempt to pass the blame for its failure to close the sale to SGM.

4 **A. VHS Fails to Satisfy The Conditions Precedent Condition Including**  
 5 **Those Stated in Sections 8.6 and 8.7 of the APA.**

6 32. VHS did not satisfy all conditions to close as required by the APA.  
 7 Notably, VHS did not satisfy the condition set forth in section 8.6 of the APA before it  
 8 improperly sent notice of closing on November 20, 2019. Indeed, the condition in 8.6  
 9 was never satisfied by VHS nor was it excused by SGM.

10 33. VHS also did not satisfy the condition in section 8.7. As stated above,  
 11 APA Section 8.7 obligated VHS to transfer its Medi-Care and Medi-Cal provider  
 12 agreements to SGM pursuant to "settlement agreements" with the Centers for  
 13 Medicare and Medicaid Services ("CMS") and the California Department of Health  
 14 Care Services ("DHCS") which "shall result in: (i) resolution of all outstanding  
 15 financial defaults under any of Sellers' . . . Medi-Cal provider agreements and (ii) full  
 16 satisfaction, discharge and release of any claims under the . . . Medi-Cal provider  
 17 agreements, whether known or unknown, that . . . DHCS . . . has against the Seller or  
 18 Purchaser for monetary liability arising under the . . . Medi-Cal provider agreements  
 19 before the Effective Time...." Despite this plain language, VHS did not comply with  
 20 this obligation.

21 34. As of the commencement of their Chapter 11 cases, VHS had  
 22 accumulated substantial liabilities to DHCS, which administers Medi-Cal in California,  
 23 for unpaid Hospital Quality Assurance Fees ("HQA Fees"), and for Medi-Cal fee-for-  
 24 service overpayments.

25 35. On March 22, 2019, DHCS filed an objection to the proposed sale to  
 26 SGM, arguing that the Medi-Cal provider agreements between it and VHS were  
 27 "executory contracts" that could not be transferred free and clear of claims, interests,  
 28 and encumbrances unless all defaults were cured, as required by Bankruptcy Code §

1 365(b). Thus, according to DHCS, the provider agreements associated with each of the  
 2 hospitals could not be transferred to SGM unless and until VHS cured the unpaid  
 3 HQAF and fee-for-service overpayments. These claims totaled tens of millions of  
 4 dollars. SGM had not agreed to assume responsibility for these claims and, pursuant to  
 5 APA § 8.7, SGM was entitled to be released and discharged from any obligation to pay  
 6 them.

7 36. In response to DHCS's objection to the sale, on April 10, 2019, VHS filed  
 8 a brief in which it argued they did not need to cure defaults because the Medi-Cal  
 9 provider agreements were non-executory contracts and could be transferred free and  
 10 clear of DHCS' claims.

11 37. On May 2, 2019, the bankruptcy court entered its Sale Order authorizing  
 12 the sale of the Hospitals to SGM free and clear of claims, liens, and encumbrances.  
 13 However, the court did not rule on the dispute between VHS and DHCS regarding  
 14 whether the provider agreements had to be treated as executory contracts. Instead, the  
 15 Sale Order expressly carved out the Medi-Cal Provider Agreements from the released  
 16 claims, liens, and encumbrances, stating:

17 Nothing in this Sale Order shall apply to Medical Provider  
 18 Agreements until and unless there is a court order approving a  
 19 settlement between the Debtors and the DHCS or a court order  
 20 resolving the DHCS's objection.

21 (Docket No. 2306).

22 38. On September 11, 2019, DHCS filed a Supplemental Brief regarding its  
 23 unresolved objection to the sale of the hospitals free and clear of claims relating to the  
 24 Debtors' Medi-Cal Provider Agreements. DHCS claimed that it was owed in excess of  
 25 \$70 Million for unpaid HQA Fees and for reimbursement of fee for service  
 26 overpayments which would have to be "cured" before the Provider Agreements could  
 27 be transferred to SGM. In its renewed objection, DHCS stated:

28 Debtors' Medi-Cal Provider Agreements (hereafter,  
 Agreements) are executory contracts that must be assumed  
 and assigned to the Buyer. For the intended assumption and

1 assignment to occur, either Debtors must pay all of the  
 2 outstanding HQA Fees incurred before the closing of the sale  
 3 or any outstanding I-IQA Fees on Debtors' account must be  
 4 paid by the Buyer through joint and severally liability. In  
 5 addition to the HQA Fee debt, Debtors and/or the Buyer must  
 also reimburse the Department for any Medi-Cal overpayment  
 and pay other debts owed to the Department.

6 (Docket No. 3043).

7 39. VHS contested DHCS's characterization of the Medical Provider  
 8 Agreements as executory contracts. To that end, VHS once again argued that the  
 9 Provider Agreements could be transferred free and clear of any claims and liens  
 10 without compliance with Bankruptcy Code section 365. VHS also conceded it needed  
 11 to provide SGM with such a transfer to satisfy the APA.

12 40. On September 26, 2019, the bankruptcy court filed its Memorandum of  
 13 Decision in which it ruled that the Medi-Cal Provider Agreements could be transferred  
 14 without compliance with Bankruptcy Code § 365(b). However, the court did not  
 15 decide whether DHCS could retain its recoupment rights, which would have allowed  
 16 DHCS to recover its claims against VHS from monies otherwise payable to SGM post-  
 17 closing. Preservation of such recoupment rights would have prevented VHS from  
 18 satisfying the condition in APA § 8.7, namely, that the provider agreements be  
 19 transferred free and clear and that SGM be fully released and discharged of DHCS  
 20 claims. In its Memorandum of Decision, the bankruptcy court expressly acknowledged  
 21 that APA Section 8.7 obligated VHS to transfer the Provider Agreements free and  
 22 clear of any DHCS claims of liability and that "the sale cannot close unless issues  
 23 regarding alleged financial defaults existing under each Provider Agreement have been  
 24 resolved." (Dkt. No. 3146 at 3).

25 41. VHS lodged its proposed order with respect to the Memorandum of  
 26 Decision on October 8, 2019. Despite the court's clear statement that it was not  
 27 deciding the recoupment issue, VHS lodged a proposed order seeking to prevent  
 28

1 DHCS from recouping payments from future SGM receivables in connection with the  
2 transfer of the Medi-Cal Provider Agreements.

3 42. The next day, on October 9, 2019, DHCS objected to VHS's proposed  
4 order, arguing that, "the proposed order is not 'consistent' with the Memorandum [of  
5 Decision]" and that "it overreaches by inserting gratuitous terms, to, for example,  
6 prohibit the Department's recoupment after the sale." (Docket No. 3330).

7 43. On October 11, 2019, the bankruptcy court agreed with DHCS that VHS's  
8 proposed order was overreaching. Contrary to VHS's Proposed Order, the bankruptcy  
9 court stated, "the Memorandum Decision did not determine whether DHCS'  
10 recoupment rights against SGM (if any) are extinguished by the transfer of the  
11 Provider Agreements free and clear of claims, interests, and encumbrances. (Docket  
12 No. 3372 at fn. 2).

13 44. On October 11, 2019, the bankruptcy court entered an order that deleted  
14 the word "recoup" from the section providing for a transfer of the Medi-Cal Provider  
15 Agreements free and clear of claims, and expressly stated that it was reserving the  
16 issue of DHCS's recoupment rights against the Debtors and SGM for future  
17 adjudication. Specifically, the bankruptcy court stated:

18           Provided, however, that nothing in this paragraph shall be  
19 construed to limit whatever rights DHCS may or may not have  
20 to withhold, under principles of equitable recoupment,  
21 payments owed by DHCS to the Debtors and or the SGM  
22 Buyers, for the purpose of recovering alleged Pre-Transfer  
23 Effective Date Liabilities under or related to the Medi-Cal  
24 Program and/or HQAF Program.

25 (Docket No. 3372). The court thus left open the question of whether the Medi-Cal  
26 Provider Agreements could be transferred free of recoupment rights and the  
27 bankruptcy court did not make any further rulings on this issue before VHS demanded  
28 that SGM close on November 20, 2019.



**B. VHS Falsely Represents that It Satisfied the Conditions to Close and Improperly Demands that SGM Close the Sale On or Before December 5, 2019.**

45. On November 20, 2019, VHS, through its counsel of record Samuel Maizel of Dentons, sent SGM a letter falsely representing that VHS had satisfied all conditions to close as of November 19, 2019 and demanding that SGM close the sale by December 5, 2019 or be deemed in breach of the APA.

46. Mr. Maizel's letter contained, at minimum, two misrepresentations with respect to VHS's satisfaction of APA Sections 8.6 and 8.7. First, Mr. Maizel falsely represented that section 8.6 of the APA had been satisfied. Mr. Maizel also suggested that Section 8.7 had been satisfied because VHS claimed: "Yesterday, as we notified you, the Debtors reached a settlement agreement with the United States, on behalf of Department of Health and Human Services and the Centers for Medicare and Medicaid Services, allowing for the transfer of the Medicare Provider Agreement without successor liability."

47. Mr. Maizel's letter does not mention any settlement with DHCS with respect to the recoupment issue left open by the court's October 11, 2019 order. Indeed, no such settlement existed at the time (to the contrary, DHCS had appealed the court's order) and, thus, VHS knowingly and in bad faith misrepresented that all conditions to close had been satisfied.

**C. SGM Notifies VHS of Its Failures.**

48. On November 22, SGM wrote two letters to VHS and advised it of its noncompliance with its obligations and conditions under the APA. SGM's letters set forth with specific detail that VHS had failed to satisfy numerous obligations under the APA, including, but not limited to: (1) VHS's failure to comply with legal requirements applicable to the conduct and operation of its hospitals, including, but not limited to, serious and material Health and Safety Code violations; (2) materially breaching APA sections 2.8, 2.10, and 4.6; (3) VHS's failure to obtain the approval of



the Office of Statewide Health Planning and Development (“OSHPD”) for the operation of several hospital facilities; (4) VHS’s failure to satisfy the conditions of APA Section 8.7 with respect to the Medicare and Medi-Cal provider agreement transfers; (5) VHS’s failure to satisfy the conditions of APA Section 8.6; (6) VHS’s failure to respond to building and safety code violations and seismic compliance at St. Vincent and Seton hospitals or even to obtain the funds required to do so – thereby improperly shifting the costs to SGM; (7) other specifically enumerated regulatory issues; (8) the substantial and material deterioration of the net patient revenue of the hospitals; (9) fraudulently withholding information concerning serious health and safety issues from SGM despite being legally obligated to disclose such conditions; (10) the substantial and material impairment of accounts receivable; (11) VHS’s failure to reserve and to disclose its failure to reserve for its accrued obligations to Independent Practice Associations, Health Plans and “Downstream Providers”; and (12) VHS’s incurrence of post-petition liability in violation of, *inter alia*, APA section 4.6(e).

49. In addition to discussing VHS’s noncompliance, SGM’s November 22 letters specifically advised VHS that:

This letter shall also constitute further notice, pursuant to APA section 8.4, of Verity’s failure to perform certain conditions, agreements and covenants, which Verity is required to perform as a condition of SGM’s obligation to Close, and the failure to perform will result in a Material Adverse Effect.

50. VHS refused to address the noncompliance issues identified in SGM’s November 22, 2019 letters. Instead, VHS wrote to SGM on November 25, 2019 and offered excuses and equivocations for its noncompliance that had no merit. For example, with respect to Section 8.7, VHS, again through its counsel Samuel Maizel, stated:

With respect to California Department of Health Care Services (“DHCS”), you acknowledge that the Debtors secured an Order [Docket No. 3372] from the Bankruptcy Court

1 authorizing the transfer of the Medi-Cal Agreement free and  
 2 clear of any interests asserted by DHCS, in addition to the Sale  
 3 Order which terminated any creditor's recoupment rights  
 4 [Docket No. 2306]. Those Orders afford equal or greater  
 5 protection to SGM than any settlement could have, thereby  
 6 satisfying Section 8.7. In any event, a settlement with DHCS  
 7 was reached on November 22, so there is no reason to debate  
 8 this point further.

9 51. As set forth below, VHS's newly concocted justifications with respect to  
 10 its alleged satisfaction of Section 8.7 were also false. To wit:

- 11 (a) Despite falsely claiming otherwise in its November 20, 2019 letter, VHS  
 12 had not, as of November 20, 2019, entered into a settlement agreement  
 13 with DHCS which resulted in: (1) resolution of all outstanding financial  
 14 defaults under any of VHS's Medi-Cal Provider Agreements, and (2) full  
 15 satisfaction, discharge and release of any claims under the Medi-Cal  
 16 Provider Agreements, whether known or unknown that DHCS had against  
 17 the seller or purchaser;
- 18 (b) Despite claiming otherwise in its November 25, 2019 letter, VHS, still did  
 19 not have a binding agreement with DHCS even as of November 22;  
 20 indeed, VHS's counsel even acknowledged at a hearing on November 26,  
 21 2019, that it had not entered into a final settlement agreement with DHCS;
- 22 (c) Despite claiming otherwise, neither the bankruptcy court's order of May  
 23 2, 2019 or October 11, 2019 provided SGM with the protection to which  
 24 it was entitled under APA Section 8.7 because, *inter alia*, neither of those  
 25 order eliminated DHCS' recoupment rights.

26 52. Indeed, VHS still had not entered into a settlement agreement with  
 27 DHCS, as of December 5, 2019, the time VHS set for closing. Instead, VHS entered  
 28 into an agreement with DHCS, *four days later*, on December 9, 2019. VHS's  
 December 9, 2019 settlement with DHCS occurred *after* VHS had already breached  
 the APA by demanding a false notice of closing for December 5, 2019, and thus, could

1 not have satisfied VHS's obligations under Section 8.7 or provided a basis upon which  
 2 VHS could demand that SGM close the sale. Even this belated agreement did not  
 3 satisfy Section 8.7.

4 53. As a result of VHS's numerous material breaches of the APA, on  
 5 December 5, 2019, SGM sent VHS a letter notifying VHS that it was in material  
 6 default of the APA and demanding the immediate return of its \$30 million deposit with  
 7 interest pursuant to section 11.2 of the APA. In direct repudiation of its obligations,  
 8 VHS refused to return SGM's \$30 million deposit. To the contrary, on December 6,  
 9 2019, VHS filed an "emergency motion for issuance of an order to show cause why  
 10 SGM failed to close the sale by December 5, 2019." The bankruptcy court denied  
 11 VHS's motion and expressly held that the parties would litigate issues concerning  
 12 breach, and whether VHS must return SGM's \$30 million deposit in future litigation  
 13 (i.e. this action).

### 14 **III. VHS WRONGFULLY "TERMINATES" THE APA.**

15 54. Continuing with its bad faith strategy, on December 17, 2019, VHS, by  
 16 and through its counsel of record, sent SGM a letter entitled "Notice of Termination  
 17 Effective Date." In VHS's Termination Notice VHS states: "As you are aware, on  
 18 November 25, 2019, November 27, 2019, and December 5, 2019, [VHS] sent [SGM]  
 19 notices of SGM's material breaches under the [APA] . . . ." VHS continued: "As a  
 20 result of each of the above material breach notices, the APA will terminate effective  
 21 December 27, 2019." On January 3, 2020, VHS filed a Notice of the Termination of  
 22 the APA with the bankruptcy court based on SGM's alleged failure to close on  
 23 December 5, 2019.

24 55. Since its wrongful termination and repudiation of the APA, VHS has  
 25 continued to wrongfully withhold SGM's \$30 million deposit, and refused all efforts  
 26 by SGM to attempt to address the numerous problems created by VHS and to close the  
 27 sale.  
 28

**FIRST CAUSE OF ACTION**

**(Breach of Contract)**

(All Counter-Defendants)

SGM reasserts and incorporates herein by reference the allegations contained in Paragraphs 1 through 55 above.

56. VHS and SGM entered into a valid contract, the APA.

57. SGM has performed all of the terms and conditions required of it under the APA, except as excused by VHS's prevention of performance, breaches, and/or repudiation.

58. VHS has materially breached the APA, including but not limited to by: (1) on November 20, 2019, demanding that SGM close the transaction despite the fact that VHS had not satisfied its obligations and conditions to closing; (2) failing to comply with legal requirements applicable to the conduct and operation of its hospitals; (3) failing to obtain the approval of the Office of Statewide Health Planning and Development ("OSHPD") for the operation of several hospital facilities; (4) failing to properly satisfy the conditions of APA Section 8.7 with respect to the Medicare and Medi-Cal provider agreement transfers and falsely representing that it had done so; (5) failing to satisfy the conditions of APA Section 8.6 and falsely representing that it had done so; (6) failing to respond to building and safety code violations and seismic compliance at St. Vincent and Seton hospitals; (7) violation of other specifically enumerated regulatory issues as set forth in the parties' correspondence; (8) allowing and precipitating the substantial and material deterioration of the net patient revenue of the hospitals; (9) allowing and precipitating the substantial and material impairment of accounts receivable; (10) failing to reserve and to disclose its failure to reserve for its accrued obligations to Independent Practice Associations, Health Plans and "Downstream Providers"; (11) incurring post-petition liability without accounting for such to SGM; and (12) wrongfully withholding SGM's \$30 million dollar deposit

1 despite its multiple material breaches of the APA and its failure to satisfy the express  
2 conditions in the APA.

3 59. VHS has further breached the APA by repudiating the contract and  
4 refusing to perform thereunder, including, without limitation, by improperly  
5 terminating the agreement in its December 17, 2019 letter entitled “Notice of  
6 Termination Effective Date.”

7 60. As a result of VHS’s breaches, SGM has sustained substantial harm in an  
8 amount to be proven at trial including, but not limited to, the wrongful retention of its  
9 \$30 million deposit and accumulated interest, additional out-of-pocket damages,  
10 including professional fees, in an amount in excess of \$13 million, plus substantial lost  
11 profits, and other damages resulting from VHS’s failure to comply with its contractual  
12 obligations.

13 61. VHS’s breaches of the APA were a substantial factor in causing SGM’s  
14 harm.

## 15 **SECOND CAUSE OF ACTION**

### 16 **(Breach of The Implied Covenant of Good Faith and Fair Dealing)**

17 (All Counter-Defendants)

18 SGM reasserts and incorporates herein by reference the allegations contained in  
19 Paragraphs 1 through 61 above.

20 62. Implicit in the contract between SGM and VHS was a covenant that VHS  
21 would use its best efforts to give effect to the terms of the APA.

22 63. This implied covenant required VHS to act in good faith at all times in an  
23 attempt to ensure that SGM received the benefits of the APA.

24 64. VHS breached this implied covenant of good faith and fair dealing by  
25 deliberately acting to deprive SGM of the benefits of the APA and by purposefully  
26 interfering in the performance of the APA such that it materially harmed SGM. VHS  
27 did so in numerous ways including but not limited to by: (1) failing to comply with  
28 legal requirements applicable to the conduct and operation of its hospitals; (2) failing

1 to obtain the approval of the Office of Statewide Health Planning and Development  
 2 (“OSHPD”) for the operation of several hospital facilities; (3) refusing to satisfy the  
 3 conditions of APA Section 8.7 with respect to the Medicare and Medi-Cal provider  
 4 agreement transfers; (4) failing to satisfy the conditions of APA Section 8.6; (5) failing  
 5 to respond to building and safety code violations and seismic compliance at St.  
 6 Vincent and Seton hospitals; (6) violation of other specifically enumerated regulatory  
 7 issues as set forth in the parties’ correspondence; (7) allowing and precipitating the  
 8 substantial and material deterioration of the net patient revenue of the hospitals; (8)  
 9 allowing and precipitating the substantial and material impairment of accounts  
 10 receivable; (9) failing to reserve and to disclose its failure to reserve for its accrued  
 11 obligations to Independent Practice Associations, Health Plans and “Downstream  
 12 Providers”; (10) incurring post-petition liability without accounting for such to SGM;  
 13 (11) wrongfully withholding SGM’s \$30 million dollar deposit; and (12) on November  
 14 20, 2019, issuing to SGM an improper demand to close based on the false  
 15 representation that all closing conditions had been satisfied.

16 65. As a result of VHS’s breaches of the implied covenant of good faith and  
 17 fair dealing, SGM has sustained substantial harm in an amount to be proven at trial  
 18 including, but not limited to, the wrongful retention of its \$30 million deposit and  
 19 accumulated interest, additional out-of-pocket damages, including professional fees, in  
 20 an amount in excess of \$13 million, plus substantial lost profits, and other damages  
 21 resulting from VHS’s failure to comply with its obligations.

22 66. VHS’s breaches of the APA were a substantial factor in causing SGM’s  
 23 harm.

24 **THIRD CAUSE OF ACTION**  
 25 **(TORTIOUS BREACH OF CONTRACT)**  
 26 **(All Counter-Defendants)**

27 SGM reasserts and incorporates herein by reference the allegations contained in  
 28 Paragraphs 1 through 66 above.



1           67. In light of the Court's ruling on August 4, 2020, SGM also now asserts a  
2 claim for tortious breach of contract as this claim asserted by VHS would also apply to  
3 SGM.

4           68. VHS, and each of them, tortiously breached the APA by (among other  
5 things) intentionally, fraudulently, unreasonably, oppressively, and without proper  
6 cause: (1) falsely representing to SGM that that they had satisfied APA section 8.6; (2)  
7 falsely representing to SGM that they had satisfied APA section 8.7; (3) fraudulently  
8 issuing to SGM an improper demand to close based on the knowingly false  
9 representation that all closing conditions had been satisfied; (4) wrongfully  
10 withholding SGM's \$30 million dollar deposit despite having materially breached the  
11 APA in violation of APA including section 11.2; (5) wrongfully terminating the APA  
12 based on SGM's failure to close the transaction on or before December 5, 2019 despite  
13 knowingly having failed to satisfy its obligations and preconditions under the APA; (6)  
14 belatedly entering into a "settlement" with the Department of Health Care Services  
15 without SGM's approval, which impermissibly attempted to shift responsibility for  
16 VHS's outstanding liabilities to SGM in violation of the APA; and (7) falsely  
17 representing to SGM that VHS would enter into an appropriate settlement agreement  
18 with DHCS that would result in the "resolution of all outstanding financial defaults  
19 under any of [VHS's] Medicare and Medi-Cal provider agreements" and "full  
20 satisfaction, discharge, and release of any claims under the Medicare or Medi-Cal  
21 provider agreements, whether known or unknown, that CMS or DHCS, as applicable,  
22 has against [VHS] or [SGM] for monetary liability arising under the Medicare or  
23 Medi-Cal provider agreements" without intending to do so. VHS committed these acts  
24 with the goal of (a) forcing SGM to complete a sale without receiving the full  
25 consideration it was promised and/or (b) manufacturing a false claim that SGM  
26 breached an obligation to close as a pretext to terminate the APA and retain SGM's  
27 good faith \$30 million deposit, and attempt to deflect blame to SGM for VHS's  
28 failures to satisfy its obligations and complete the sale of the hospitals.

69. VHS intended and/or knew that its conduct described herein would cause severe harm in the form of, inter alia, substantial consequential damages to SGM. As a direct and proximate result of VHS's tortious breach of the APA and breach of the implied covenant and fair dealing, SGM has suffered substantial damages in an amount to be proved.

70. As a further direct and proximate result of VHS's tortious breach of the APA, SGM has been suffered damages including attorneys' fees and other expenses to pursue its rights to benefits due under the APA, and causing SGM to suffer further loss in an amount to be proved.

71. SGM is informed and believes and thereupon alleges that VHS, and each of them, intentionally engaged in a course of conduct which was intended or expected to injure SGM, in conscious disregard of SGM's rights under the APA, as alleged in this counterclaim, including without limitation in Paragraphs 4-7, 31-55, and 67-71 above. SGM is informed and believes and thereupon alleges that these acts were willful, despicable, oppressive, and/or fraudulent as contemplated by California Civil Code § 3294, and that all were done with the knowledge, approval and ratification of VHS, and each of them, by or through their managerial agents. In order to deter such conduct by VHS, and each of them, in the future, and to prevent repetition of such conduct as a practice, SGM prays for exemplary and punitive damages.

#### **PRAYER FOR RELIEF**

WHEREFORE, SGM requests the following relief:

1. For special and consequential damages as set forth above and in an amount to be proven at trial;
2. An order requiring the return of SGM's \$30 million deposit and interest;
3. Litigation costs and attorneys' fees; and
4. On the Third Cause of Action, punitive damages in an amount to punish or make an example of VHS's conduct;
5. Pre-judgment and post-judgment interest allowed by law;

6. All other appropriate relief the Court deems just and proper.

**BARNES & THORNBURG LLP**

Dated: August 20, 2020

By: /s/ Kevin D. Rising

Kevin D. Rising  
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Holdings, Inc., KPC Healthcare, Inc.,  
and KPC Global Management, LLC and  
Counter-Plaintiff Strategic Global  
Management, Inc.

**DEMAND FOR JURY TRIAL**

Defendants and Counter-Plaintiff SGM hereby demand a jury trial on all issues  
herein.

**BARNES & THORNBURG LLP**

Dated: August 20, 2020

By: /s/ Kevin D. Rising

Kevin D. Rising  
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