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Special Litigation Counsel to Debtor

Southern Inyo Healthcare District

# UNITED STATES BANKRUPTCY COURT EASTERN DISTRICT OF CALIFORNIA FRESNO DIVISION

In re SOUTHERN INYO HEALTHCARE **DISTRICT** Chapter 9 Debtor. SOUTHERN INYO HEALTHCARE DISTRICT, plaintiff v.

HEALTHCARE CONGLOMERATE ASSOCIATES, LLC; VI HEALTHCARE FINANCE, INC.; and DOES 1 through 10, defendants.

Bankruptcy Case No.: 16-10015 Chapter 9

Adv. Case No.:

#### **COMPLAINT FOR:**

- (1) AVOIDANCE OF UNAUTHORIZED **POST-PETITION TRANSFERS**;
- (2) BREACH OF CONTRACT;
- (3) ACCOUNTING;
- (4) NEGLIGENCE;
- (5) CONCEALMENT;
- (6) BREACH OF FIDUCIARY DUTY;
- (7) DECLARATORY RELIEF
- (8) EQUITABLE SUBORDINATION;
- (9) VIOLATION OF GOVERNMENT **CODE § 8314**

Chapter 9 Debtor, Southern Inyo Healthcare District ("District," "Plaintiff," or "Debtor") hereby submits this Complaint against Healthcare Conglomerate Associates, LLC ("HCCA"), Vi Healthcare Finance, Inc. ("Vi"), and Does 1 through 10 and hereby alleges as follows: ///

#### NATURE OF THE ACTION

- 1. This complaint arises from multiple breaches of the duties of due care, contract and loyalty owed to the District by its former manager HCCA, which is wholly owned by Dr. Yorai Benzeevi, and Vi, which is a finance company associated with Benzeevi. The District's relationship with HCCA began in January, 2016 when the District entered into a Management Services Agreement ("MSA") and line of credit with HCCA. Pursuant to the MSA, the Board of Directors for the District turned over control of the District's operations and management to HCCA, including operations of the hospital and other facilities. However, in the years following execution of the MSA, HCCA engaged in an outrageous pattern and practice of negligence, breach of the MSA; unauthorized transfers of the District's money and failure to disclose critical financial and other information to the District's Board of Directors.
- 2. As a result of HCCA's refusal to provide information to the District, the District has yet to discover the full nature and extent of HCCA's wrongful conduct; however, such conduct includes, but is not limited to: (1) negligent and intentional refusal to provide required financial and other information to the District's Board of Directors; (2) diversion of District money into accounts owned by HCCA or other related entities to which the District has no access; (3) borrowing on the line of credit with HCCA and Vi and failing to use those funds for authorized payments and (4) failing to make any reasonable effort to collect the District's accounts receivable or to assist it to become financially stable.

### STATEMENT OF JURISDICTION AND VENUE

3. This adversary proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(A) (matters concerning the administration of the estate), (E) (orders to turn over property of the estate); and (O) (other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship). To the extent that any claim for relief in this complaint is determined to be non-core, Plaintiff consents to entry of final judgment and orders by the Bankruptcy Court.

4. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and 1334, in that this civil proceeding arises in, arises under, and relates to the bankruptcy case pending in the United States Court for the Eastern District of California, Fresno Division, entitled *In re Inyo County Healthcare District*, case number 16-10015.

5. Venue properly lies in the Eastern District of California, Fresno Division in that this adversary proceeding arises in or is related to a case in this District under Title 11 of the United States Code as provided in 28 U.S.C. §§ 1408 and 1409.

## THE PARTIES

- 6. The District is, and at all times relevant was, a local healthcare district in Lone Pine, Inyo County, California and organized under §§ 3200, *et seq.* of the California Health & Safety Code.
- 7. Defendant HCCA is, and at all times relevant was, a California limited liability company. Until recently, HCCA maintained its principle place of business in Tulare County, California but, on information and belief, now maintains its principle place of business in Los Angeles, California.
- 8. Defendant Vi Healthcare Finance, Inc. ("Vi") is, and at all times relevant was, a California corporation. Vi is located at 4924 West Lakewood Drive, Visalia, California 93291. According to the Statement of Information on file with the California Secretary of State, Yorai "Benny" Benzeevi is the sole officer and director of Vi. Dr. Benzeevi is also the sole member of HCCA.
- 9. The District is uninformed as to the true names, capacities and identities of defendants DOES 1 through 10, inclusive, but is informed and believes and thereon alleges that said DOE defendants are responsible for the harm herein complained of and the District will amend this complaint with the appropriate charging allegations when their true names, capacities and identities are ascertained.
- 10. The District is informed and believes and thereon alleges that each of the Doe defendants are, and at all times herein relevant were, the agent, joint venturer and/or co-

conspirator of the other defendants, and in doing the things herein alleged, were acting within the scope and course of said agency, joint venture and concert of action, and by reason thereof, each of said defendants are jointly and severally liable for the harm described.

### **GENERAL ALLEGATIONS**

- 11. The District is a rural healthcare district founded on July 5, 1949, under the California Local Health Care District Law (formerly the Local Hospital District Law). Over the 60 years following its creation, the District proudly served the community of Southern Inyo County, California, and expanded to serve the growing needs of the community—adding a skilled nursing facility ("SNF") and rural medical clinic.
- 12. Between 2008 and 2015, the District experienced financial problems, difficulty hiring and retaining qualified medical staff in the area, declining occupancy and operational revenues, discounts and reductions imposed by insurers and governmental programs, and ultimately closure of its facilities. In December, 2015, the Board's Chief Executive Officer resigned, followed by the mass resignation of the five (5) member board at which point the District was without executive management and governance.
- 13. On or about December 29, 2015, the Inyo County Board of Supervisors appointed a new board of directors for the District and, shortly thereafter, the new board began evaluating the financial condition of the District. The Board, however, had few choices. The Debtor was left without an operating hospital to generate revenue or sufficient funds to restart operations. The Debtor also lacked the necessary medical staff to reopen all operations. Further complicating an already precarious situation, the California Department of Public Health ("CDPH") served the Debtor with a demand to either voluntarily suspend its medical licenses by January 5, 2016, or the CDPH would involuntarily suspend the medical licenses.
- 14. The new District Board immediately took action. The new District Board began working with defendant HCCA, who purported to be a restructuring and advisory firm focused on the reorganization and operation of medical practices and hospitals, to evaluate the potential reorganizational strategies and financing options to reopen the hospital, SNF and rural clinic.

After evaluating the financial condition of District and potential restructuring options, the District Board noticed a public hearing to obtain comments from the community regarding the potential restructuring of the District through bankruptcy and the involvement of HCCA in the restructuring and management of the District hospital and facilities.

- 15. On or about January 2, 2016, the District and HCCA entered the Management Services Agreement ("MSA"). A true and correct copy of the MSA is attached as Exhibit 1. Pursuant to the MSA, HCCA is vested with the authority to manage the operational and financial aspects of the District's facilities.
- 16. Pursuant to the MSA, HCCA was specifically retained to provide "Bankruptcy Advice" and to "provide District with consultation and advice in connection with a potential filing by District of a proceeding under Chapter 9 of the Bankruptcy Code"; to "arrange and supervise the bankruptcy proceedings." The MSA also provided that the Chief Restructuring Officer, an employee of HCCA, "shall serve as the representative of the District in connection with any such Chapter 9 bankruptcy proceeding."
- 17. On or about January 3, 2016, the District Board adopted resolution number 16-01 ("Resolution"), which, among other things, declared a fiscal emergency under California Government Code § 53760.5 due to the threat posed to public health and welfare from the financial condition of the hospital—namely, the inability to provide emergency and critical medical care to the surrounding community—and the inability to pay current obligations due to the lack of any cash or short-term income potential. On or about January 4, 2016, the District filed a voluntary petition for relief under chapter 9 of the Bankruptcy Code. HCCA managed the District during the bankruptcy case until October 23, 2017.
- 18. In connection with the MSA, on January 2, 2016, HCCA and Debtor entered an agreement for a revolving unsecured line of credit at 10% interest to, among other things, fund operations and costs associated with the restructuring and the bankruptcy case and ensure that crucial vendors, doctors, and nurses were paid in order to keep the facilities open.

19. HCCA made at least the following advances on the line of credit without Debtor's knowledge or consent as follows:

Date of Advance	Amount
December, 2016	\$50,000
January, 2017	\$310,000
February, 2017	\$60,000
March, 2017	\$330,000
April, 2017	\$90,000
May, 2017	\$10,000
July, 2017	\$150,000
September, 2017	\$250,000

- 20. HCCA also made unauthorized loans and transfers between the Tulare Local Healthcare District ("Tulare District") and the Debtor, including in order to fund intergovernmental transfers ("IGT") to the State of California.
- 21. In March 2017, Dr. Benzeevi contended that the line of credit should be paid as an administrative claim in the bankruptcy case and indicated that HCCA would not advance further funds under the line of credit. During this same period of time, the Debtor learned HCCA had failed in its duties to collect accounts receivable to fund its operations and that the line of credit was in excess of \$1,000,000.
- 22. Had HCCA exercised reasonable care in the collection of the Debtor's accounts receivables, the Debtor would not have been required to borrow some or all of the line of credit to fund its operations.
- 23. In April 2017, Debtor's Board learned of the possibility of obtaining a line of credit from another source secured by tax deposits, which loans are available to hospitals.

24. At the same time, HCCA appeared to become increasingly worried about the lack of collateral securing the line of credit and threatened that it would not make Debtor's payroll if new terms were not agreed.

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- 25. In July 2017, under the threat of not making payroll, HCCA offered Debtor terms of a new line of credit. HCCA proposed to fold in the old unsecured revolving line of credit at the 10% interest rate and provide new credit at 20%. HCCA also demanded that both the prepetition and post-petition lines of credit would be secured by tax revenues.
- 26. On or about July 19, 2017, Vi, another entity controlled by Dr. Benzeevi and the Debtor entered a Revolving Line of Credit Note (Secured) providing Debtor a \$2,000,000 line of credit ("LOC"), \$1,038,789.56 of which was the existing amounts drawn on the pre-petition line of credit, secured by all of Inyo County tax revenues, including "all property tax revenues, parcel tax revenues, tobacco tax revenues, [] and any other tax revenues." The security for the LOC is documented in the Assignment, Security Agreement and Pledge Agreement ("Security Agreement"). The Security Agreement allows Vi to collect directly all county tax revenues.
  - 27. The LOC required all requests for advances to be made in writing to Vi.
- 28. The LOC provided an interest rate of 10% on the first \$1,038,789.56 borrowed under the pre-petition line of credit and an interest rate of 20% on funds borrowed going forward. The maturity date of the loan is "one hundred twenty (120) days after demand by Lender" or four years and 360 days after the date of the note if no demand is made.
- 29. Payments under the LOC are allocated first "to the payment of reimbursement of all reasonable advances, expenses and disbursements of the Lender" and second "to be applied in any manner desired by the Lender to the satisfaction of the Secured Indebtedness."
- 30. On or about July 25, 2017, Debtor gave notice to the Inyo County Auditor/Controller that all tax revenues had been assigned to Vi.
- 31. After obtaining the new line of credit, Debtor's Board met to create a "critical vendor list" to determine which vendors absolutely needed to be paid such that the Board should draw down on the 20% line of credit. The critical vendor list payments totaled approximately

\$350,000. In creating the list, the Board realized that HCCA had failed to disclose that doctors had not been paid.

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- 32. HCCA also acted below any reasonable standard for care in other instances. For example, HCCA failed to respond to a signature request to complete a hospital drug room certification per state regulations, which led to an expired drug room permit and a citation from the State Board of Pharmacy and the California Department of Health. HCCA also failed to respond to requests for evidence of an "organized medical staff" or pharmacy and therapeutics committee, which led to citations. HCCA failed to have a defined admission criteria or written infection control plan, which led to unsafe conditions and citations. HCCA did not pay a contracted education vendor, which lead to the District failing to meet requirements for initial staff education and re-training.
- 33. HCCA failed to make an IGT payment on behalf of the District in or about September 2017, which lead to the District's loss of \$300,000 in supplemental funds.
- 34. Throughout HCCA's relationship with the District, HCCA has failed to make efforts to assist the District in obtaining a bond and tax measure, even though HCCA represented to the District that it would do so and the District relied on that representation in deciding to contract with HCCA.
- 35. To obtain approval of the bond measure, the District is required to conduct financial analyses. Although obligated to prepare and produce such reports under the MSA, HCCA failed to provide the requested reports and financial information despite repeated requests from the District, both orally and in writing. Accordingly, the District Board took steps to compel HCCA to comply with the request and, simultaneously, obtain the requisite financial information from an alternate source. Regrettably, due to the authority granted to HCCA with respect to financial matters under the MSA, the District Board has still not been able to obtain complete financial records that the District believes can be relied upon.
- 36. On information and belief, HCCA transferred medical supplies to the District that were owned by the Tulare District without the Tulare District's consent or the District's

knowledge or consent. On information and belief, HCCA invoiced and payed itself with the District's funds for these medical supplies.

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- 37. On or about October 5, 2017, the District began to learn of the full extent of HCCA's financial mismanagement. Counsel for the District obtained copies of bank statements and transactional records for the District's bank accounts ("Bank Records"). The Bank Records contained inconsistencies with certain reports and representations previously provided by HCCA and numerous transactions not authorized by the District Board.
- 38. The Bank Records revealed numerous unauthorized transfers by and between the District and the Tulare District ("Tulare Transfers").
- 39. HCCA represented that the transfer of approximately \$700,000 to Tulare District on behalf of HCCA was in satisfaction of amounts owing under the line of credit extended by HCCA to the District. The Bank Records, however, demonstrate that the line of credit had a zero dollar (\$0.00) balance as of the date of the \$700,000 transfer. Accordingly, it appears that the representation that the transfer was in satisfaction of amounts due under the HCCA line of credit was false. Rather, these funds were transferred to Tulare on behalf of HCCA on account of management fees to HCCA and was not for the purpose of paying down the line of credit with HCCA.
- 40. On or about September 30, 2017, the Tulare District commenced its own Chapter 9 bankruptcy case. Shortly thereafter, the Tulare District filed a motion seeking authority to reject its management agreement with HCCA. The Tulare District has alleged similar wrongdoings by HCCA as those recently discovered by the District. In addition to alleging that the HCCA management agreement is oppressive and entirely one-sided (as it is here), the Tulare District avers that HCCA mismanaged its operations by, among other things, paying management fees at the expense of employees. The Tulare District has also alleged unauthorized transfers of funds by HCCA between the District and the Tulare District.
- 41. The financial reports prepared by HCCA represented that HCCA made numerous loans and thereafter received payment on account of the purported loans. The bank statements,

however, appear to indicate that the payments were on account of HCCA's management fees—not the repayment of any advances on the line of credit which HCCA purported to extend.

- 42. On or about October 11, 2017, the District held a special board meeting to discuss, among other things, the findings from the evaluation of the bank records and whether to remove HCCA through the rejection and/or termination of the MSA. Based on the available information and documentation, the District Board concluded that HCCA had engaged in a series of improper actions, including, without limitation, misusing and misappropriating District funds; misrepresenting and misleading the District Board regarding the financial dealings of the District; concealing information regarding the financial dealings of the District; and failing to comply with the terms of the MSA by, among other things, failing to provide complete and accurate financial reports, failing to perform its duties and failing to facilitate the preparation of audited financial statements.
- 43. On October 17, 2017, the District filed an emergency motion to terminate the MSA. On October 23, 2017, the Court entered an order authorizing the removal of HCCA as a signatory to the District's bank accounts and continued the hearing on termination of the MSA. On November 22, 2017, the District and MSA filed a settlement with the court agreeing to terminate the MSA. The settlement did not contain any releases of liability.
- 44. The District will suffer irreparable injury if HCCA is not ordered to turn over all tax revenues currently in its possession and to be collected in the future on account of the District.

## **THE MSA**

- 45. The MSA was grossly unfavorable to the District, and included several unconscionable terms and conditions which are against public policy, including but not limited to the below summarized terms:
  - 2(c): Irrevocability of Agreement. The District "irrevocably waives and relinquishes any right, power or authority existing at law or in equity to terminate this Agreement, except in strict accordance with the express provisions of this Agreement."

But see 10(d)(i) . . . Manager shall have the absolute right to terminate this Agreement, with or without "cause," upon at least thirty (30) days written notice to the District.

- 4(g)(v): Manager is hereby authorized to make payment from the Master Account or other accounts of the District . . . to itself and its Affiliates of any amounts due to it or any of the by the District under this Agreement or otherwise . . . and the District acknowledges that any amounts due to Manager or any of its Affiliates under this Agreement, including without limitation, any Management Fee, shall be senior in priority, and shall not be subordinate to the payment of, any amount due to any other creditor of Company.
- 4(l)(ii): The District hereby grants to Manager . . . an exclusive special power of attorney and appoints manager . . . the District's exclusive true and lawful agent and attorney-in-fact . . . to: (i) sign checks, drafts, bank notes or other instruments on behalf of the District, (ii) make withdrawals from the Depository Account, the Master Account or other the District accounts [] for payments specified in this Agreement and (iii) designate, remove, and change such signatories on such accounts as Manager deems necessary or appropriate . . .
- (iii) . . . The special power of attorney granted herein is coupled with an interest and shall be irrevocable except with Manager's written consent.
- 6(f): The obligations of the District under this Agreement rank and shall rank at least senior in priority of payment to all other unsecured debt of the District. Fund transfers and other payments received by the District shall be directed, regardless of the payment purpose indicated on the payment document, according to the priority ranking (1) payment of the Management Fee . . . (2) payment of any secured indebtedness; and (3) all other debts of the District.
- 8(a): The District hereby agrees to indemnify, defend and hold Manager harmless from and against any and all claims, actions . . . including reasonable attorneys'

fees . . . asserted against Manager on account of any of the obligations, liabilities or debts of the District or the Hospital . . . The District further agrees to defend, hold harmless and indemnify Manager . . . from and against any and all claims . . . arising out of actions taken by Manager . . . in what Manager reasonably believed to be within the scope of their responsibilities . . . However, in no event shall Manager . . . be liable to the District for any loss of use, goodwill, revenue or profits . . . or any damage or expense . . . . .

- (b)(i) . . . In the event this Agreement is terminated as a result of any District Default, the District shall pay a fee . . . .
- (ii) The Termination fee shall be an amount equal to Thirty Two Thousand Five Hundred Dollars (\$32,500) per month first increased by CPA, as provided below, and then multiplied by the remaining number of months in the Operating Period (initially 5 years) at the time of termination . ..
- 46. On information and belief, the MSA was presented to the District on short notice and executed under duress.

## **FIRST CLAIM FOR RELIEF**

# (Avoidance of Unauthorized Post-Petition Transfer – 11 U.S.C. § 549(a) against HCCA and Does 1-5)

- 47. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 48. The Tulare Transfers were transfers of property of the District's Estate to HCCA and/or the Tulare District for the benefit of HCCA that were not authorized under Title 11 or by the Court.
- 49. All payments made to HCCA for repayment of the line of credit or the management fees that were made without the express written consent of the Board of the District ("HCCA Transfers") were not authorized under Title 11 or by the Court.

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- 50. The District may avoid and recover the Tulare Transfers and the HCCA Transfers or their value pursuant to 11 U.S.C. § 549 and recover them pursuant to 11 U.S.C. § 550.
- Any transfer avoided by the Court is preserved for the benefit of the bankruptcy 51. estate pursuant to 11 U.S.C. § 551.

## **SECOND CLAIM FOR RELIEF**

# (Avoidance of Unauthorized Post-Petition Transfer – 11 U.S.C. § 549(a) against Vi and **Does 1-5**)

- 52. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 53. All payments made to Vi for repayment of the LOC that were made without the express written consent of the Board of the District ("Vi Transfers") were not authorized under Title 11 or by the Court.
- 54. The District may avoid and recover the Vi Transfers or their value pursuant to 11 U.S.C. § 549 and recover them pursuant to 11 U.S.C. § 550.
- 55. Any transfer avoided by the Court is preserved for the benefit of the bankruptcy estate pursuant to 11 U.S.C. § 551.

## THIRD CLAIM FOR RELIEF

## (Breach of MSA – against HCCA and Does 1-5)

- 56. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 57. On or about January 2, 2016, the District and HCCA entered the MSA wherein, HCCA was to manage and operate the District's hospital and facilities located in Lone Pine, California.
- 58. The MSA at pages 28 and 29 requires HCCA to "deliver to" the District, the reports and financial statements reasonably requested by the Governing Body." "Oversight shall include consultation with respect to Hospital and Other facilities: (i) General ledger/financial accounting; (ii) Accounts payable; (iii) Payroll; . . . (vi) Monthly bank

- reconciliation." It further provides that "Monthly financial statements, including income statements, balance sheets, statement of cash flows . . . . shall generally be available to the District by the 20th day of the month following the applicable period." In addition, the MSA provides that "Authorized agents of the District shall have the right at all reasonable times during the usual business hours, at the District's expense, to audit, examine and make copies of or extracts from the books of account of the District maintained by the Manager."
- 59. The District has performed all terms, covenants, promises and conditions required of it under the MSA except to the extent such performance was excused by the conduct of HCCA.
- 60. HCCA has breached the MSA by, among other things, failing and refusing to account to the District; denying the District the right to inspect, audit, examine and make copies of the books of account for the District maintained by HCCA; improperly managing the District's hospital and related healthcare clinics; and other self-dealing.
- 61. In addition, HCCA has breached the MSA by, among other things, commingling the District's and Tulare's funds and supplies, failing to make any reasonable effort to collect the District's accounts receivable, repeatedly drawing on the line of credit to pay operating expenses and failing to pay doctors and critical vendors.
- 62. As a direct and proximate result of HCCA's breaches of the MSA, the District has been damaged in an amount to be determined at the time of trial.

## **FOURTH CLAIM FOR RELIEF**

# (Breach of Line of Credit – against HCCA and Does 1-5)

- 63. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 64. In connection with the MSA, on January 2, 2016, HCCA and Debtor entered the agreement for a revolving unsecured line of credit at 10% interest to, among other things, fund operations and costs associated with the restructuring and the bankruptcy case on a limited as

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needed basis when accounts receivable and other income were insufficient to pay crucial vendors, doctors, and nurses.

- 65. The District has performed all terms, covenants, promises and conditions required of it under the revolving line of credit except to the extent such performance was excused by the conduct of HCCA.
- 66. HCCA has breached the revolving line of credit by, among other things, making advances without the knowledge or consent in writing of the District.
- 67. As a direct and proximate result of HCCA's breaches of the revolving line of credit, the District has been damaged in an amount to be determined at the time of trial.

## FIFTH CLAIM FOR RELIEF

## (Breach of Line of Credit – against Vi and Does 6-10)

- 68. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
  - 69. On or about July 19, 2017, Vi and the District entered the LOC.
  - 70. The LOC required all requests for advances to be made in writing to Vi.
- 71. The District has performed all terms, covenants, promises and conditions required of it under the LOC except to the extent such performance was excused by the conduct of Vi.
- 72. Vi has breached the LOC by, among other things, failing to make payments to creditors from funds advanced.
- 73. As a direct and proximate result of Vi's breaches of the LOC, the District has been damaged in an amount to be determined at the time of trial.

## SIXTH CLAIM FOR RELIEF

# $(Accounting-against\ HCCA\ and\ Does\ 1-5)$

- 74. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 75. Pursuant to the MSA, HCCA was required to "deliver to" the District, the reports and financial statements reasonably requested by the Governing Body." "Oversight shall

include consultation with respect to Hospital and Other facilities: (i) General ledger/financial accounting; (ii) Accounts payable; (iii) Payroll; . . . (vi) Monthly bank reconciliation." It further provides that "Monthly financial statements, including income statements, balance sheets, statement of cash flows . . . . shall generally be available to the District by the 20th day of the month following the applicable period." In addition, the MSA provides that "Authorized agents of the District shall have the right at all reasonable times during the usual business hours, at the District's expense, to audit, examine and make copies of or extracts from the books of account of the District maintained by the Manager."

- 76. Pursuant to the terms of the MSA, HCCA owed a duty to the District to account for all revenues received with respect to the hospital, and also to provide such accounting to the District on a monthly, quarterly, and annual basis, and upon reasonable request.
- 77. Pursuant to the terms of the line of credit, HCCA owed a duty to the District to account for all amounts drawn on the line of credit, all fees and costs, and all payments on the line of credit and to provide such accounting to the District on a monthly, quarterly, and annual basis, and upon reasonable request.
- 78. Despite HCCA's obligations to account under the MSA and line of credit, HCCA has failed and refused to provide such an accounting to the District.
- 79. The amount of money due by HCCA to the District in connection with its mismanagement of the District per the MSA and improper draws on the line of credit is unknown to the District and cannot be ascertained without an accounting by HCCA. The District has demanded that HCCA provide an accounting of all revenue received by HCCA and all expenditures made by HCCA, however, to date, HCCA has not provided the District with a full, complete and accurate accounting.

## **SEVENTH CLAIM FOR RELIEF**

(Accounting – against Vi and Does 6-10)

80. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.

- 81. Pursuant to the terms of the LOC, Vi owed a duty to the District to account for all amounts drawn on the line of credit, all fees and costs, and all payments on the line of credit and to provide such accounting to the District upon reasonable request.
- 82. Despite Vi's obligations to account under the LOC, Vi has failed and refused to provide such an accounting to the District.
- 83. The amount of money due to Vi or from Vi to the District is unknown to the District and cannot be ascertained without an accounting by Vi.
- 84. The District reasonably relied on HCCA's representation that the transfer was in satisfaction of amounts owing under the line of credit extended by HCCA to the District.
- 85. As a result of HCCA's misrepresentations, the District was damaged in an amount according to proof. HCCA's conduct, and the District's reasonable reliance on HCCA's misrepresentations was a substantial factor in causing the District's harm.

## **EIGTH CLAIM FOR RELIEF**

## (Negligence – against HCCA and Does 1-5)

- 86. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 87. HCCA owed a duty of due care to the District, including, without limitation, to assist the District in managing its finances, collecting its accounts receivable, paying necessary vendors and doctors and nurses, reorganizing and becoming financially stable, and obtaining a bond measure.
- 88. HCCA breached each and all of these duties of due care by failing to act reasonably, including, without limitation, in the collection of accounts receivables, financial management and assistance in financing.
- 89. HCCA's breach of duties was the proximate case of the District's failure to collect accounts receivables, pay vendors and healthcare professional and obtain financing under a bond measure.

90. As a result of HCCA's breach of duty, the District was damaged in an amount according to proof. HCCA's breach of duty of due care and the District's reasonable reliance on HCCA's misrepresentations was a substantial factor in causing the District's harm.

## **NINTH CLAIM FOR RELIEF**

## (Concealment – against HCCA and Does 1-5)

- 91. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 92. By virtue of the MSA, HCCA was the designated manager of the District. As a result of that relationship, HCCA owed fiduciary duties and obligations to the District.
- 93. Throughout the parties' relationship, HCCA failed to disclose material facts to the District, including providing inaccurate financial accounting of the District's operations. HCCA's conduct of concealment includes, but is not limited to: HCCA's practice of drawing on the line of credit without the District's written consent in order to prevent the District from discovering financial troubles; commingling funds with Tulare in order to prevent the District from discovering financial troubles and mismanagement; failure to pay employees and vendors; and HCCA's refusal to provide financial records and information to the District despite demand Although the full extent of HCCA's wrongful conduct and concealment is not yet known, the District is informed and believes that HCCA intentionally and improperly concealed HCCA's diversion of District assets to itself.
  - 94. The District did not know of the concealed facts.
- 95. At all times relevant herein, HCCA intended to deceive the District by concealing the facts and other financial information that would have revealed HCCA's misconduct.
- 96. Had the District been aware of the concealed facts, it would have behaved differently, including but not limited to taking action to remove HCCA as the District's manager and seeking recovery of losses sustained as a result of HCCA's misconduct.
- 97. As a result of HCCA's concealment, the District has been damaged in an amount according to proof.

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98. HCCA's concealment was a substantial factor in causing the District's harm.

## **TENTH CLAIM FOR RELIEF**

## (Breach of Fiduciary Duty – against HCCA and Does 1-5)

- 99. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 100. HCCA was charged with managing and operating the District's hospital and related clinics, and therefore owed a fiduciary duty to the District and the public to refrain from actions and/or conduct that would cause injury to the District and/or to deprive the District of profit or economic advantages which it was rightfully entitled by virtue of its hospital and facilities.
- 101. HCCA violated its fiduciary duties owed to the District by, including but not limited to, misappropriating the District's funds for HCCA's benefit and gain.
- 102. In acting as described above, HCCA did not exercise the care required of managers in such a fiduciary role in that HCCA acted for its own benefit and to the detriment of the District, which resulted in the District losing money, property, and incurring unnecessary and considerable debt or other liabilities without receipt of any benefit to the District.
- 103. As a proximate result of the acts of HCCA, as previously described, the District has been damaged in an amount to be determined at trial.

# **ELEVENTH CLAIM FOR RELIEF**

## (Declaratory Relief – against HCCA and Does 1-5)

- 104. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 105. An actual controversy has arisen and now exists between the District and HCCA concerning their respective rights and duties under the MSA. Specifically, the District contends that it has no obligation to pay HCCA a termination fee pursuant to the MSA because such payment offends public policy and is prejudicial to the public's interests and because the MSA was terminated based on the willful and malicious conduct of HCCA.

106. The District desires a judicial determination of its rights and duties and a declaration as to its obligations, if any, to HCCA under the Agreements.

107. A judicial declaration is necessary and appropriate at this time under the circumstances so that the District can ascertain its rights and duties under the MSA. The District has no adequate remedy available at law for relief from the matters set forth herein, and therefore seeks the above-requested declaratory relief.

## **TWELFTH CLAIM FOR RELIEF**

# (Equitable Subordination Pursuant to 11 U.S.C. § 510(C) and § 105(A) – against HCCA, Vi and Does 1-10)

- 108. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 109. HCCA's and Vi's claims in the District's Chapter 9 case should be equitably subordinated in their entirety to all other claims.
- 110. As outlined hereinabove, HCCA engaged in inequitable conduct, including but not limited to misappropriating the Tulare Transfers and the HCCA Transfers and the other wrongful conduct detailed in this complaint. Likewise, Vi engaged in inequitable conduct, including but not limited to drawing on the LOC without the knowledge or written consent of the Board of the District.
- 111. The conduct of HCCA and Vi was inequitable as to the District's other unsecured creditors and was intended to result in injury to said creditors and to provide an advantage to HCCA and Vi over the other creditors satisfaction of its claims.
- 112. Pursuant to §§ 510(c) and 105(a) of the Bankruptcy Code, any claims by HCCA or Vi against the District should be subordinated to the claims of the District's other unsecured creditors as such is consistent with the provisions of the Bankruptcy Code which authorizes a creditor's claim to be subordinated to the claims of other creditors.

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113. Once HCCA's and Vi's claims are subordinated, a judicial declaration is necessary that HCCA has no interest in the District's tax revenues and any security interest is released.

## THIRTEENTH CLAIM FOR RELIEF

# (Improper Use of Public Resources Pursuant to Government Code § 8314 – against HCCA and Does 1-5)

- 114. The District incorporates by reference paragraphs 1 through 46 above as though set forth in full here.
- 115. HCCA used public resources, including but not limited to funds owned by the District for personal purposes not authorized by law by paying such funds to itself without authorization from the District and in purported compensation for services that HCCA failed to perform. The use was substantial enough to result in gain or advantage to HCCA and loss to the District for which monetary value may be estimated.
- 116. As a result of HCCA's violation of Government Code § 8314, HCAA is liable for civil penalties of \$1,000 for each day on which it improperly used and had in its possession the District's funds and property.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that this Court enter judgment as follows:

- 1. For damages according to proof;
- 2. For punitive damages;
- 3. For treble damages;
- 4. For costs of suit incurred herein;
- 5. For interest on judgment from the date of entry of judgment until paid in full at the maximum legal rate;
  - 6. For an accounting;
- 7. For repayment to the District of the full amount by which HCCA and Vi have been unjustly enriched and restitution of all sums obtained by HCCA and Vi for

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their unlawful actions and breaches of duty;

- 8. For a constructive trust compelling HCCA to transfer all wrongfully obtained property to the District pursuant to California Civil Code §§ 2223 and 2224;
- 9. For a declaratory judgment that the District does not owe HCCA any termination fees pursuant to the MSA;
- 10. For an order that any secured claims asserted by HCCA or Vi against the District's bankruptcy estate are equitably subordinated in their entirety;
- 11. For declaratory judgment that neither HCCA nor Vi has a security interest in the District's tax revenues;
- 12. For penalties of \$1,000 for day for each day that HCCA was improperly in possession of the District's funds or property for personal use;
  - 13. For attorneys' fees;
- 14. For an injunction ordering HCCA to turn over all tax revenues received on account of the District and currently in its possession and to cease further collection of any and all tax revenues; and
  - 15. For such other relief as the Court deems just and proper.

Dated: 5/30/2018 THE SHINBROT FIRM

By:/s/Jeffrey S. Shinbrot
Jeffrey S. Shinbrot, Special
Litigation Counsel for the Southern Inyo
Healthcare District