

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

VILLAGE OF MELROSE PARK,

Case No. 19 CH 03041

Plaintiff,

Honorable Eve M. Reilly

v.

PIPELINE HEALTH SYSTEM LLC, a
Delaware limited liability company, SRC
HOSPITAL INVESTMENTS II LLC, a
Delaware limited liability company, PIPELINE–
WESTLAKE HOSPITAL LLC, a Delaware
limited liability company, TWG PARTNERS
LLC, an Illinois limited liability company,
NICHOLAS ORZANO, an individual, ERIC
WHITAKER, an individual, and JAMES
EDWARDS, an individual,

Defendants,

and

TENET HEALTHCARE CORPORATION, a
Nevada corporation,

Respondent in Discovery.

FIRST AMENDED VERIFIED COMPLAINT
AND DEMAND FOR JURY TRIAL

Plaintiff Village of Melrose Park (“Plaintiff” or “Village”) brings this action against Defendants Pipeline Health System LLC, SRC Hospital Investments II LLC, Pipeline–Westlake Hospital LLC, and TWG Partners LLC (the “Private Equity Defendants”), along with Nicholas Orzano, Eric Whitaker, and James Edwards (“Jim Edwards”) (the “Individual Defendants”), for their role in a fraudulent scheme to acquire Westlake Hospital (“Westlake”) under false pretenses, and seek to recover monetary and injunctive relief for harm and injuries caused to the Village resulting therefrom. Plaintiff, for its First Amended Verified Complaint, alleges as follows based upon personal knowledge as to itself, and for all other matters, upon information

and belief:

NATURE OF THE ACTION

1. This lawsuit arises from a fraud perpetuated by a consortium of private equity funds and their owners in connection with their purchase of Westlake Hospital, a health facility located in Melrose Park, only to shutter it. Defendants knew that their fraudulent scheme would harm and injure the Village of Melrose Park, its residents, hundreds of Westlake employees, and the tens of thousands of patients who rely on the hospital for medical care and services. Now that their scheme has come fully to fruition: Pipeline Health System LLC put Pipeline-Westlake Hospital LLC into Chapter 7 bankruptcy on August 7, 2019 and the hospital is now permanently closed.

2. Westlake was a full-service hospital, with 230 beds and more than 600 employees, that provided comprehensive medical services, including emergency, radiology, rehabilitation, surgical, behavioral health, psychiatric, and in-patient detoxification, to community members in Melrose Park and the surrounding suburbs.

3. Critically, Westlake would not turn away patients that could not pay for medical care. As the one and only hospital in the area, Westlake provided significant levels of services and care to tens of thousands of low-income and medically vulnerable community members, including Medicaid beneficiaries and the uninsured, and served as a critical community safety net.

4. Westlake provided services completely free of charge to individuals in households with incomes less than 200% of the Federal Poverty Level—called “charity care”—and steeply discounted services to individuals in households with incomes under 500% of the Federal Poverty Level or that were already cost-burdened by medical debt.

5. In 2018, Pipeline Health Systems LLC and TWG Partners LLC—through their respective principals, Nicholas Orzano, Eric Whitaker, and Jim Edwards—reached an agreement in principle to purchase Westlake from then-owner Tenet Healthcare Corporation. (The hospital would be owned by two newly-formed companies, SRC Hospital Investments II LLC and its wholly-owned subsidiary, Pipeline–Westlake Hospital LLC.) The purchase was contingent upon the approval of the Illinois Health Facilities and Services Review Board (the “Review Board”), which, among other things, reviews change of ownership applications to ensure compliance with the Illinois Health Facilities Planning Act (the “Planning Act”) and related rules and regulations.

6. On September 6, 2018, the Private Equity Defendants submitted their application to change ownership of Westlake and promised that the hospital would remain open. Specifically, the application stated that “[f]ollowing the Transaction, Westlake will continue to operate for the benefit of the residents of Chicago and the greater Chicago area, including serving poor and underserved individuals through Westlake’s charitable activities,” and the transaction “will result in no changes to the scope of services offered at Westlake.” (September 6, 2018 Change of Ownership Application, attached hereto as Exhibit 1, at 0150–51.) Defendant Orzano personally affirmed that these statements were accurate and truthful by submitting a signed certification with the application. (*Id.* at 010-014.)

7. To obtain the requisite approval under the Planning Act, the Private Equity Defendants were further required to affirm to the Review Board, in writing, that (a) the facility will not adopt a more restrictive charity care policy than the policy in effect one year prior to the transaction, and (b) the signed certifications that the charity care policy will remain in effect for a two-year period following the change of ownership transaction.

8. The same application includes signed certifications affirming that:

- (a) Defendants will adopt a charity care policy that “is not more restrictive than the current charity care policies at Westlake;” (emphasis in original) and
- (b) their “charity care policy will remain in place for *no less than two (2) years* following the consummation of the Transaction.” (emphasis added).

(Ex. 1 at 0150–51; 0176-77.) These affirmations were signed and certified by Defendant Nicholas Orzano, the Chief Executive Officer of Defendant SRC Hospital Investments, and a principal at Pipeline Health Systems, where he sits on the company’s executive management team.

9. Two additional individuals signed the September 6, 2018 application on behalf of Tenet Healthcare Corporation: Vice President Douglas Rabe and Senior Vice President Michael Maloney. Both Rabe and Maloney certified, in writing, that the information provided in the application is “complete and correct to the best of [their] knowledge and belief.” (Ex. 1 at 0016.)

10. Defendant Eric Whitaker, on behalf of the Private Equity Defendants and in furtherance of the fraudulent scheme, also promised that Westlake Hospital would remain open and operating for the benefit of the community. He personally made that and additional statements to the Village, as well as to community members and the public, through numerous interviews with local newspapers and television networks.

11. Defendant Jim Edwards, on behalf of the Private Equity Defendants and in furtherance of the fraudulent scheme, also represented that Westlake Hospital would remain open and operating. He personally made these representations to community members and the public through numerous interviews with local newspapers, as well as to the Mayor of the Village.

12. Based on these representations, including, specifically, the statements made by

Defendant Whitaker and Defendant Edwards, the Village made the decision to (i) waive its right to object and oppose the Private Equity Defendants' Change of Ownership Application; (ii) waive its right to request a public hearing on the matter before the Review Board; and (iii) approve the Private Equity Defendants' request that it assign the rights to a Redevelopment Agreement that the Village entered into with the previous owner of Westlake.

13. Unfortunately for the Village and the tens of thousands of underserved and medically vulnerable individuals for whom Westlake serves as a safety net, the representations made by the Private Equity Defendants and Individual Defendants were false.

14. The Private Equity Defendants and Individual Defendants had no intention to keep Westlake open once the purchase was completed, despite the promises they made to the Village, the Review Board, the community members that rely on Westlake's safety net services, and the public.

15. In fact, Pipeline Health Systems created the Pipeline-Westlake entity for the sole purpose of acquiring—and then immediately closing—Westlake Hospital pursuant to a strategy developed by Pipeline Health Systems for the benefit of its investors. To ensure that its investment strategy was carried out as intended, Pipeline Health Systems placed its officers and executives in exclusive control of the Pipeline-Westlake Hospital, and by extension, the entire Westlake Hospital operation (even though none of them lived in Illinois or anywhere even close to the Midwest). Pipeline-Westlake Hospital was a sham entity that had no independent officers or executives and no decision-making authority whatsoever, even on routine day-to-day matters at the hospital, such as staffing, food service for patients, and maintenance.

16. Even Pipeline Health System's own executives and principals freely admit that Pipeline Health Systems—and not the sham Pipeline-Westlake Hospital entity—was the real

owner and operator of Westlake Hospital. For example, Pipeline Health Systems’s principal, Eric Whitaker, appeared for a regulatory hearing on April 30, 2019 and testified under oath that Pipeline Health Systems “currently owns and operates Westlake Hospital.” Likewise, Pipeline Health Systems’s Chief Executive Officer submitted written testimony to the Illinois General Assembly Appropriations-Human Services Committee for the “Keep Westlake Hospital Open” hearing that began with “I’m Jim Edwards, the CEO of Pipeline Health Systems. We own and operate eight hospitals and medical centers across the United States, including . . . Westlake Hospital.” These are just two of the many admissions that Pipeline Health Systems made about its ownership and control of the hospital.¹

17. Indeed, just *two weeks* after the transaction was consummated, Defendants backtracked on all of their promises and announced that they intended to close down Westlake by June 2019. They filed an Application for Discontinuance with the Review Board on February 21, 2019. (February 21, 2019 Application for Discontinuance, attached hereto as Exhibit 2.)

18. For months, however, their efforts were blocked by various court orders, including a preliminary injunction secured by the Village prohibiting Pipeline-Westlake Hospital from discontinuing any services or otherwise closing the hospital. Given that it had no interest in actually operating Westlake Hospital, Pipeline Health Systems decided that it would rather put its sham Pipeline-Westlake Hospital entity into Chapter 7 bankruptcy than spend money running a hospital that it never wanted in the first place. Like all other decisions relating to the ownership and operation of the hospital, the decision to file for Chapter 7 bankruptcy—i.e., to close the

¹ Even Pipeline Health Systems’s own website admits that “Pipeline Health owns and operates hospitals and healthcare organizations nationwide” and identifies Westlake Hospital as one of its many assets. *See* <https://www.pipelinehealth.us/properties/> (last accessed Dec. 20, 2019).

facility, liquidate the hospital's assets, and terminate its employees—was made exclusively and entirely by Defendant Pipeline Health Systems and its principals, Defendants Edwards and Orzano. Defendants SRC Hospital Investments, TWG Partners, and Whitaker took direction and orders directly from Pipeline Health Systems.

19. On August 6, 2019, at Pipeline Health Systems's direction, the sham Pipeline-Westlake Hospital entity filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Delaware, a forum located more than 800 miles away from Westlake Hospital and more than 2,700 miles away from Pipeline Health Systems's and Pipeline-Westlake Hospital's shared corporate headquarters (a single office suite in El Segundo, California that also serves as the corporate headquarters to more than a dozen other "Pipeline" entities). Upon motion by the United States Trustee, the case was transferred to the United States Bankruptcy Court for the Northern District of Illinois, where it remains pending.

20. Plaintiff seeks monetary and injunctive relief for its losses caused by the fraud perpetrated by the Private Equity Defendants and Individual Defendants, penalties for each violation of its municipal code, and a declaration that the Private Equity Defendants and Individual Defendants defrauded the Village and the State of Illinois.

PARTIES

21. Plaintiff Village of Melrose Park is a municipal corporation existing under the laws of the State of Illinois.

22. Defendant Pipeline Health Systems LLC ("Pipeline Health Systems") is a limited liability company existing under the laws of the State of Delaware, with its principal place of business located at 898 Pacific Coast Highway, Suite 500, El Segundo, California 90245.

23. Defendant SRC Hospital Investments II LLC ("SRC Hospital Investments") is a

limited liability company existing under the laws of the State of Delaware, with its principal place of business located at 898 Pacific Coast Highway, Suite 500, El Segundo, California 90245.

24. Pipeline–Westlake Hospital LLC (“Pipeline–Westlake Hospital”) is a limited liability company existing under the laws of the State of Delaware, with its principal place of business located at 1225 West Lake Street, Melrose Park, Illinois 60160. Pipeline-Westlake Hospital is a defendant in name only. The entity filed for bankruptcy on August 6, 2019. Plaintiff does not seek any monetary relief from Pipeline-Westlake Hospital.

25. Defendant TWG Partners LLC (“TWG Partners”) is a limited liability company existing under the laws of the State of Illinois, with its principal place of business located at 7030 South Euclid Avenue, Chicago, Illinois 60649.

26. Defendant Nicholas Orzano is a natural person and a resident of the State of California. Orzano is the Chief Executive Officer of Defendant SRC Hospital Investments and is a principal at Defendant Pipeline Health Systems where he sits on the company’s executive management team.

27. Defendant Eric Whitaker is a natural person and a resident of the State of Illinois. Whitaker is a principal at TWG Partners and is a principal and vice chairman at Pipeline Health Systems.

28. Defendant Jim Edwards is a natural person and a resident of the State of California. Edwards has represented himself to be the Chief Executive officer of Defendant SRC Hospital Investments and the Chief Executive Officer of Pipeline Health Systems.

29. Respondent in Discovery Tenet Healthcare Corporation (“Tenet”) controlled the entities on the other side of the Westlake transaction: (1) VHS of Illinois, Inc., which conveyed

the property and fixtures of Westlake Hospital to the relevant Pipeline entity (Westlake Property Holdings, LLC); and (2) VHS Westlake Hospital, Inc., which formerly operated Westlake Hospital and was the Pipeline entities' co-applicant on the Change of Ownership Application. At all times relevant to this lawsuit, Tenet intended for the purchase of Westlake Hospital to result in its permanent closure. On information and belief, the purchase agreement between Tenet and the Pipeline entities expressly required the closure of Westlake Hospital. Tenet has information about which additional individuals and entities were involved in the scheme alleged herein and should be named as additional defendants in this action.

JURISDICTION AND VENUE

30. This Court has subject matter jurisdiction over the claims pursuant to Article VI, Section 9 of the Illinois Constitution.

31. This Court has personal jurisdiction over each Defendant pursuant to 735 ILCS 5/2-209 because each transacts business in Illinois, has committed tortious acts in Illinois, and owns, uses, and/or possesses real estate situated in Illinois. The Court further has jurisdiction over Defendant TWG Partners because it is a limited liability company organized under the laws of Illinois. The Court further has jurisdiction over Defendant Whitaker because he is a natural person domiciled or residing within Illinois.

32. Venue is proper in this Court because Cook County is the county of residence of Defendants TWG Partners and Whitaker and because the cause of action arises out of a transaction occurring in Cook County and statements that were specifically directed to, and received by, individuals in Cook County.

FACTUAL BACKGROUND

Westlake Hospital Provided Significant Medical Services to Community Members.

33. Westlake Hospital had been in operation since 1927. It grew into a 230-bed facility providing a broad range of medical services, with more than 200 practicing physicians in more than 30 specialties.

34. The hospital plays a critical role in the provision of medical services to community members in Melrose Park, as well as the surrounding suburbs.

35. For example, the hospital was a Level II trauma facility, a Level II nursery, and the only area hospital with a functioning obstetrics department providing pregnancy, childbirth, and post-partum services. Westlake was also a certified stroke center and chest pain center.

36. Westlake is the only area facility that provided in-patient psychiatric care to individuals that had exhausted their Medicare-eligible days of care (just 190 in an individual's lifetime). For Medicaid recipients that need frequent in-patient psychiatric care in the Melrose Park area, Westlake was the only option.

37. Westlake was also one of the few bulwarks against the opioid crisis in the area, providing the only in-patient substance abuse treatment in the Village. Similarly, it is the only place in Melrose Park where patients could receive opioid dependence treatment (including access to Suboxone, Vivitrol, and buprenorphine).

Westlake Hospital Provides Safety Net Services and Charity Care to Tens of Thousands of Community Members Every Year.

38. Westlake provides care to low-income, medically, and socially vulnerable populations, including Medicaid beneficiaries and the uninsured. Many of the services provided by Westlake—especially with respect to pregnancy, childbirth, and in-patient psychiatric care—are not provided anywhere else in the area.

39. Between Westlake's 2015 and 2018 fiscal years, the hospital served more than 30,000 Medicaid beneficiaries.

40. For many years, Westlake had maintained a commitment to the community to provide "charity care"—steeply discounted or free medical care—to those with low incomes or who are burdened with medical debt.

41. Prior to the Private Equity Defendants' purchase of the hospital, Westlake maintained a charity care policy that provided entirely free medical services for emergency, non-elective care to uninsured individuals with family incomes below 200% of the Federal Poverty Level. Westlake also provided discounts of between 40% and 80% to those with incomes below 500% of the Federal Poverty Level or who had balances due for hospital services that exceeded a quarter of their annual incomes.

42. Between Westlake's 2015 and 2018 fiscal years, it provided completely free care to more than 2,500 people through its charity care program.

43. Defendant Orzano expressly promised, under penalty of perjury, that Westlake Hospital would adopt the charity care policy already in place at the hospital and maintain said policy for "no less than two (2) years." (Ex. 1 at 0176-77.)

The Private Equity Defendants Publicly Claimed Throughout The Review Board Process That Westlake Hospital Would Stay Open.

44. Entities seeking to purchase a hospital in Illinois must first obtain approval from the Review Board pursuant to the Illinois Health Facilities Planning Act, 20 ILCS 3960/1 *et seq.*

45. The Planning Act was enacted, in part, to "establish an orderly and comprehensive health care delivery system that will guarantee the availability of quality health care to the general public" and "to maintain and improve the provision of essential health care services and increase the accessibility of those services to the medically underserved and

indigent.” 20 ILCS 3960/2.

46. As a general rule, a permit must be obtained from the Review Board before any person or entity may purchase, build, or modify a hospital in Illinois, or make any changes to the scope of medical services offered at any hospital facility. When considering permit applications, the Review Board weighs various factors, including the impact that the change of ownership will have on the community at large, as well as on community members that rely on the hospital for medical care. This factor is especially relevant when the availability of safety net services may be reduced or taken away altogether.

47. While the general rule is that a permit must be obtained before starting a project regulated by the Planning Act, certain projects are “eligible for an exemption, rather than a permit.” 20 ILCS 3960/6(b). When applicants submit applications that qualify for an exemption, the Review Board must approve the application and has no discretion to deny it.

48. To qualify for a change of ownership exemption—and avoid the permit process—applicants must, among other things, affirm that they will not impose a more restrictive charity care policy at the subject hospital for two years:

An application for change of ownership of a hospital shall not be deemed complete without a signed certification that for a period of 2 years after the change of ownership transaction is effective, the hospital will not adopt a charity care policy that is more restrictive than the policy in effect during the year prior to the transaction.

20 ILCS 3960/8.5(a).

49. To be clear, the Planning Act does not always require purchasers to keep their newly acquired hospitals open for two years. To the extent that change of ownership applicants cannot commit to maintaining the charity care policy for two years, then they must seek approval for the change of ownership through the permit process rather than by seeking an exemption.

When considering an application for a permit, the Review Board has the ability to weigh various factors, including the impact of the potential hospital closure against the health and safety needs of patients in the area, to determine whether the change of ownership is in the best interest of the community, the public, and the State of Illinois.

50. The Planning Act provides for public hearings on applications for a change of ownership, but only if a hearing is requested within thirty (30) days. 20 ILCS 3960/8.5(b). Any member of the public may request a hearing.

51. As detailed below, in 2018, Defendants jointly planned to (1) acquire Westlake, (2) shutter the hospital, and (3) sell off the assets for profit. In order to accomplish this scheme, Defendants lied to Plaintiff, the Review Board, and members of the community about their true intentions for Westlake, to prevent anyone from interfering. As part of this venture, each Defendant, including individual Defendants Whitaker and Edwards, authorized and approved the representations that were made to the Review Board in their Change of Ownership Application, the Village, and to the public.

52. On September 6, 2018, the Private Equity Defendants submitted an application to the Review Board for a change of ownership exemption. The application made several material representations, including:

- (a) “Following the Transaction, SRC will be adopting a Charity Care Policy at Westlake” that is identical to the charity care policy already in place (the “SRC Charity Care Policy”);
- (b) “The SRC Charity Care Policy is not more restrictive than the current charity care policies at Westlake” (emphasis in original);
- (c) “The SRC Charity Care Policy will remain in place for no less than two (2) years following the consummation of the Transaction”;
- (d) “Following the Transaction, Westlake will continue to operate for the benefit of the residents of Chicago and the greater Chicago area, including serving

poor and underserved individuals through Westlake's charitable activities";

- (e) "The Transaction set forth in this [Change of Ownership Exemption] will result in no changes to the scope of services offered at Westlake";
- (f) "Following the Transaction, SRC will be implementing a Charity Care Policy at Westlake;" and
- (g) "The SRC Charity Care Policy will not be more restrictive than the current Charity Care Policy of Westlake, and will remain in effect for at least two (2) years after the Transaction."

(Ex. 1 at 0150-0151.)

53. These statements were made by Defendant SRC Hospital Investments and Defendant Pipeline–Westlake Hospital, at the direction of Defendant Pipeline Health Systems LLC and Defendant Edwards, and the truth and veracity of these statements was affirmed by Defendant Orzano.

54. On information and belief, Defendant TWG Partners and Defendant Eric Whitaker also directed these statements be made and/or specifically approved the statements before they were submitted to the Review Board.

55. When the transaction was completed, Defendant Pipeline Health Systems announced that Defendant Whitaker joined the company as a principal and vice chairman. Upon information and belief, given the timing of the announcement, this arrangement was contingent upon the consummation of the purchase agreement and was meant to serve as compensation to Defendant Whitaker for his participation in the scheme.

The Private Equity Defendants Also Made These Representations Directly to the Village in Connection With a Request to Assign Them the Rights And Benefits of a Redevelopment Agreement.

56. Because of the importance of its role in the community, Plaintiff has invested heavily in Westlake's viability and success. In 2010, the Village entered into a Redevelopment

Agreement (“RDA”) with then-owner Vanguard Health Systems—which was later assigned to the hospital’s most recent owner, Tenet Healthcare Corporation—to help Vanguard make capital improvements to Westlake.

57. Complementing the Redevelopment Agreement was the Village’s creation of the Chicago Avenue/Superior Street Tax Increment Financing (“TIF”) District, which set aside certain property tax revenues to provide Westlake with the financial support called for in the Redevelopment Agreement.

58. The goal of the RDA and TIF District was to keep the hospital open and operating. Through that agreement, Westlake’s owner received 50% of the set-aside TIF funds from the district for redevelopment projects.

59. Pursuant to its terms, the RDA could be assigned to future owners of Westlake, but only upon the written consent of the Village. When Tenet purchased Vanguard, the Village consented to the assignment of the RDA to Tenet.

60. Between June 2018 (when the purchase was announced) and October 22, 2018, Defendant Whitaker, on behalf of the Private Equity Defendants, sought approval from the Village to reassign the rights in the RDA to Pipeline.

61. When confronted with the Private Equity Defendants’ request for assignment of the RDA, the Village—through Mayor Ronald Serpico—told Defendant Whitaker that the Village would only consent to the assignment of the RDA if the Private Equity Defendants promised not to close Westlake Hospital. Defendant Whitaker, on behalf of the Private Equity Defendants, responded by unequivocally promising that Westlake would remain open and continue serving the Melrose Park community. This representation was made to both Mayor Serpico and members of the Village Council and was consistent with other public statements

being made by Defendants.

62. Given the Defendants' promise not to close Westlake, Mayor Serpico and members of the Village Council voted to approve the request for assignment of the RDA to Pipeline on October 22, 2018. Had Mayor Serpico and Village Council members known that the Defendants intended to close Westlake, they would not have voted to approve the assignment of the RDA.

In Light of All These Representations, the Village Waived its Rights to Oppose the Change of Ownership Application and Request a Public Hearing.

63. Relying on the representations made directly to the Village by Defendant Whitaker, as well as those made through the Private Equity Defendants' Application, Plaintiff waived its right to oppose the Change of Ownership Application and similarly waived its right to request a public hearing before the Review Board. As a result, there was no opposition to the Application and no public hearing was held.

64. On November 11, 2018, the Review Board—also relying on the statements—granted the exemption.

65. After the exemption was granted, Defendants continued to represent, through the completion of the purchase, that Westlake would remain open and never corrected their earlier representations. Accordingly, neither the Village nor any other party sought review of the Board's decision to grant the exemption.

The Private Equity Defendants and Individual Defendants Repeatedly Made Representations Regarding Their Plan to Keep Westlake Hospital Open After They Acquired It.

66. Since mid-2018, the Private Equity Defendants and Individual Defendants have engaged in a concerted effort to convince the public—and by extension, the Village, the community, the Review Board, and the State of Illinois—that they were purchasing Westlake to

invest in the facility and improve the delivery of health care in Melrose Park.

67. Pursuant to this concerted effort, the Individual Defendants and other Private Equity Defendant principals made numerous statements to the press, including:

- (a) Defendant Whitaker's statement on January 29, 2019, before the purchase was consummated, that "Pipeline is primed to revitalize struggling community hospitals that allow residents to access care closer to home."²
- (b) That same day, Pipeline CEO Jim Edwards stated that "We're not put out by the fact that these hospitals have some issues and problems from a financial perspective . . . We feel strongly with our resources, our finances, our experience we can come in and make a difference, and, for lack of a better way to put it, save these hospitals."³
- (c) Jim Edwards told another outlet that "[Defendant Whitaker is] going to be very instrumental in our ability to be able to take these hospitals and make them sustainable and viable for years to come . . . There's a need for community hospitals. The quality and cost structure we can bring to hospitals like Weiss, West Suburban and Westlake is just what these communities need."⁴
- (d) Days later, Jim Edwards reiterated that "We spent a great amount of time and due diligence studying these hospitals and understanding them as much as we could. We just felt that these were hospitals that could be solid community hospitals . . . I think all three hospitals are loved by the physicians who are here. They are very eager to be working with us as we go forward here and try to bring these hospitals back to very viable, sustainable hospitals that can be here for a long time."⁵

² Alex Kacik, *Tenet sells its remaining Chicago hospitals to Pipeline Health*, MODERN HEALTHCARE (Jan. 29, 2019), <https://cite.law/9FL5-GR5L>.

³ Lisa Schencker, *'We can . . . save these hospitals': Weiss, Westlake, and West Suburban sold for \$70 million to for-profit firm*, CHICAGO TRIBUNE (Jan. 29, 2019), <https://www.chicagotribune.com/business/ct-biz-westlake-weiss-suburban-hospital-sale-0129-story.html>.

⁴ Stephanie Goldberg, *Pipeline Health acquires Chicago-area hospitals*, CRAIN'S CHICAGO BUSINESS (Jan. 29, 2019), <https://cite.law/MUH9-YB2L>.

⁵ *On the Record with Jim Edwards, CEO, Pipeline Health*, HEALTH NEWS ILLINOIS (Feb. 1, 2019), <https://cite.law/LPV2-3Q46>.

Two Weeks After the Purchase Was Completed, Defendants Announced Their Plans to Close Westlake Hospital as Quickly as Possible, Thus Revealing Their Fraud for the First Time.

68. The sale of Westlake to the Private Equity Defendants was completed on January 29, 2019.

69. Just two weeks after Edwards's statements, and after Westlake's sale was completed, Defendant Whitaker began calling the area's political representatives, including Representative Emanuel Chris Welch, to announce Defendants' plans to close the hospital.⁶

70. At the time, in February 2019, Defendant Whitaker represented that the Defendants did not anticipate having to close Westlake: "As we looked at the financials, the losses had accelerated tremendously and it was beyond what we had projected . . . To the extent that we would have to pour a lot of capital into Westlake, it really would have endangered the other two hospitals we had as part of the purchase."⁷

71. Of course, Whitaker's and Edward's representations that Westlake would be kept open were knowingly untrue, as all of the Defendants—including Whitaker and Edwards—knew that they would close Westlake immediately after the sale was completed. These statements were made in furtherance of the fraudulent scheme developed by all Defendants to make it seem as though they had intended to keep Westlake open, when in reality, they had already made the decision to permanently close it.

72. In fact, on information and belief, the purchase agreement between Tenet and the Private Equity Defendants expressly stated that Westlake Hospital would be closed immediately.

⁶ Stephanie Goldberg, *Melrose Park hospital to close after being acquired*, CRAIN'S CHICAGO BUSINESS (Feb. 15, 2019), <https://cite.law/X74G-8GRW>.

⁷ Lisa Schencker, *Melrose Park's Westlake Hospital to close, reversing plans by new owner to invest in 670-employee hospital*, CHICAGO TRIBUNE (Feb. 17, 2019), <https://www.chicagotribune.com/business/ct-biz-westlake-hospital-melrose-park-to-close-20190216-story.html>.

73. In any event, Pipeline Health Systems CEO Jim Edwards testified under oath, at a show cause hearing before Judge Moshe Jacobius in this matter on April 16, 2019, that Pipeline Health Systems had already made the decision to close Westlake Hospital in December 2018. This was before the transaction closed in late January 2019 and before Whitaker and Edwards made the statements identified above.

74. Defendants' representations regarding their commitment to maintain the same charity care policy at Westlake for at least two years, and to continue providing medical services to community members were lies intended to deceive the Village, the Review Board, and the community into putting up no opposition to the Change of Ownership Application.

75. The Private Equity Defendants thereafter immediately filed an application to close Westlake with the Review Board on February 21, 2019. (Ex. 2.)

76. Amazingly, Defendants do not even pretend that there has been a sudden change of circumstances that necessitate the closing of Westlake, in the application. Instead, and contrary to all of the representations that Defendants made in their Change of Ownership Application, the Defendants blame the sudden need to shut down the hospital on a variety of reasons, including (a) that there are additional operational costs associated with "a broad national trend over the past 20 years of moving away from inpatient care toward outpatient and ambulatory care," (b) hospitals in Illinois face increasing financial pressure, as demonstrated by the fact that "between 2012 and 2017 . . . hospitals [in Illinois] reportedly discontinued more than 170 pediatric beds," (c) there is a "continuously-reducing demand for services at Westlake," (d) "the hospital has operated at a significant loss since at least 2015," and (e) Westlake incurred net operating losses of \$14 million in 2018. (Ex. 2 at 000080-000084.)

77. Dr. Whitaker gave similar excuses, again based on longstanding facts, at the

Board's hearing on the application to discontinue services at the Hospital, on April 30, 2019, at which he testified about the national trend away from "one-off hospital[s]," fewer inpatient visits at the Hospital in prior years, and a supposed oversupply of hospital beds in the area. Again, these excuses were just pretext designed to justify the Private Equity Defendants' breach of their promises to keep the hospital open.

78. Each of these supposed reasons to immediately shut down Westlake demonstrates Defendants' knowledge of the fraud: Every single one of these excuses is based on events that occurred in the past, before the Defendants consummated the agreement to purchase the hospital. None of the reasons for discontinuance of the hospital articulated by Defendants excuse—or even address—the numerous representations made by the Private Equity Defendants and Individual Defendants since they announced their plans to purchase the hospital.

79. To the contrary, given that each of the reasons for discontinuation listed in the application are based on past occurrences and information that was available prior to the consummation of the purchase agreement, these statements prove that Defendants' earlier representations were knowingly false and deceptive at the time they were made.

To Sidestep a Preliminary Injunction Prohibiting Westlake from Closing, Pipeline Health Systems Directed The Hospital to File For Chapter 7 Bankruptcy.

80. On April 9, 2019, Defendant Jim Edwards, acting in his capacity as CEO of Pipeline Health Systems, instructed senior-level Pipeline-Westlake Hospital personnel to begin shutting down all operations at Westlake Hospital. Specifically, Defendant Edwards created and distributed an action plan to senior-level Pipeline-Westlake personnel, which instructed them to, *inter alia*, stop admitting new patients, immediately transfer existing patients out of the hospital, stop scheduling new procedures for any new or existing patient, and cancel all surgical and outpatient procedures that had already been scheduled.

81. It is undisputed that Pipeline Health Systems ordered the immediate suspension of services and hospital closure. As explained by an April 9, 2019 memorandum that was circulated to the medical staff by senior Pipeline-Westlake Hospital personnel, “Pipeline Health has temporarily suspended inpatient admissions and all emergency surgeries at Westlake Hospital . . . The company today also issued WARN Act notices to Westlake employees, which provide staff 60 days advance notice of potential closure.” A few hours later, the Westlake Hospital website was updated with a new post stating, “Pipeline Health today announced a temporary service suspension at Westlake Hospital in Melrose Park.” The website post also featured a statement from Pipeline Health Systems CEO Jim Edwards explaining that “[t]his action is being taken after considering all alternatives and with the best interest of our patients in mind.”⁸

82. Facing a public health crisis from the sudden shutdown of a local hospital serving especially vulnerable populations, the Village moved for a temporary restraining order (“TRO”) on April 9, 2019. The Court granted the TRO, enjoining Defendants from discontinuing services at the Hospital or changing the status quo. When Pipeline Health Systems continued forward with its closure plan, in violation of the TRO, Melrose Park filed an emergency petition for a rule to show cause. This Court, through Judge Jacobius, issued the rule to show cause and set the matter for an evidentiary hearing on April 16, 2019.

83. During the hearing, Pipeline Health Systems – not Pipeline-Westlake Hospital – freely admitted that it suspended services at the hospital and began closing it down. Judge Jacobius thereafter granted Melrose Park’s motion for a directed finding and held Defendants in indirect civil contempt.

84. Notably, at the hearing, Defendant Edwards admitted that Pipeline Health

⁸ See www.westlakehosp.com/news (last accessed September 11, 2019).

Systems – not Pipeline-Westlake Hospital – made the decision to close Westlake Hospital in December 2018, well before the purchase of the Hospital was completed on January 29, 2019.

85. Defendant Edwards also admitted that Pipeline Health Systems – not Pipeline-Westlake Hospital – owned and operated Westlake Hospital and was the only company with the control and authority to suspend services at the facility.

86. During the hearing, Pipeline Health Systems CEO Jim Edwards testified that:

- he was “responsible for the overall operations and performance, including patient safety, at all of our eight hospitals in Dallas, Los Angeles, and here in the Chicagoland area,” including Westlake Hospital;
- he was the person that made the decision to suspend services indefinitely at Westlake Hospital, and that he made that decision without consulting *any* of the hospital’s department chairs because “they don’t understand the overarching responsibilities of staffing in the hospital;” and
- he had the control and authority to discontinue services at Westlake Hospital and that none of the Pipeline-Westlake personnel had the control or authority to make that decision.

87. Pipeline-Westlake Hospital “Chief Nursing Officer”⁹ Roslyn Lennon also testified that:

- Pipeline Health Systems owned and controlled Westlake Hospital and was in control of all operational aspects and decisions; and
- both she and the “CEO” of Pipeline-Westlake Hospital (Joseph Ottolino) were directed by Pipeline Health Systems to close down the hospital, cancel scheduled procedures, stop admitting new patients, and issue WARN letters on April 9, 2019.

⁹ Pipeline Health Systems gave certain Pipeline-Westlake Hospital personnel official-sounding titles like “Chief Nursing Officer,” or in the case of Joseph Ottolino, “Chief Executive Officer,” to make it appear to other hospital personnel as though they had the independent authority to operate Westlake Hospital. But these titles were meaningless. No Pipeline-Westlake Hospital employee—including the so-called “CNO” and “CEO”—had any authority or control over any aspect of the hospital. Rather, they were only there to carry out Pipeline Health Systems’s directions and instructions.

88. On April 30, 2019, the Review Board granted Pipeline Health System's application to close Westlake Hospital. Pipeline Health System announced that the facility would close on May 3, 2019 at 4:00 p.m.

89. On May 2, 2019, Melrose Park filed an action challenging the Review Board's decision to approve the application to close Westlake Hospital, along with an emergency motion to stay the Review Board's decision. The stay motion sought an order prohibiting Westlake Hospital from closing until after the administrative review action was adjudicated. *See Village of Melrose Park v. Illinois Health Facilities & Servs. Review Bd.*, 2019 CH 05553 (Cir. Ct. Cook Cty., Ill.). The State's Attorney of Cook County joined this action and motion on behalf of the People of the State of Illinois.

90. On May 7, 2019, the court granted the motion to stay and ordered Pipeline-Westlake Hospital and SRC Hospital Investments to keep Westlake Hospital open pending adjudication of the action.

91. The entire Westlake Hospital operation was funded exclusively by Pipeline Health Systems. Neither Pipeline-Westlake Hospital nor SRC Hospital Investments generated nor received any capital or funding from any source other than Pipeline Health Systems. Pipeline-Westlake Hospital and SRC Hospital Investments were completely and entirely dependent on Pipeline Health Systems for capital and funding to operate Westlake Hospital.

92. Pipeline Health Systems structured its subordinate entities—in this case Pipeline-Westlake Hospital and SRC Hospital Investments—to be entirely dependent on Pipeline Health Systems for capital and funding. As such, Pipeline Health Systems knew that its capital and funding was the sole source of capital and funding for the entire Westlake Hospital operation and that neither Pipeline-Westlake Hospital nor SRC Hospital Investments would receive (or could

receive) any funding or capital from any other source. Accordingly, Pipeline Health Systems knew that without its capital and funding, Westlake Hospital would have no operating capital and would be unable to operate as a going concern.

93. Two months later, without any further warning or notice to Melrose Park or the Westlake Hospital employees, Pipeline Health Systems made good on its earlier threat to bankrupt the hospital.

94. On August 6, 2019, at Pipeline Health Systems's direction, the sham Pipeline-Westlake Hospital entity filed for Chapter 7 bankruptcy in the United States Bankruptcy Court for the District of Delaware, a forum located more than 800 miles away from Westlake Hospital and more than 2,700 miles away from Pipeline Health's and Pipeline-Westlake's shared corporate headquarters (a single office suite in El Segundo, California that also serves as the corporate headquarters to more than a dozen other "Pipeline" entities).

95. Pipeline-Westlake Hospital's bankruptcy filing admitted that the entity was *insolvent* "as early as February 2019," thus proving that the sham entity was grossly undercapitalized and never intended to be the entity operating Westlake Hospital.

96. Upon motion by the United States Trustee, the case was transferred to the United States Bankruptcy Court for the Northern District of Illinois, where it remains pending. A few days later, on August 19, 2019, the Chapter 7 bankruptcy trustee closed Westlake Hospital.

97. Further, though Pipeline Health Systems has already (and repeatedly) admitted to owning and operating Westlake Hospital, it's important to note that at least 3 of the 5 individuals on the Board of Managers of SRC Hospital Investments—the entity that, according to the regulatory filings, owns Pipeline-Westlake Hospital—also sit on the Board of Managers at Pipeline Health Systems. Specifically, Defendant Jim Edwards (CEO and part owner of Pipeline

Health Systems), Defendant Nicholas Orzano (President of Pipeline Health Systems), and Mark Bell (Founder and Co-President of Pipeline Health Systems) also serve on the SRC Hospital Investments Board of Managers. Pipeline Health Systems President Nicholas Orzano and Pipeline Health Systems CEO Jim Edwards took turns serving as the CEO of SRC Hospital Investments, with Jim Edwards currently serving as CEO of both Pipeline Health Systems and SRC Hospital Investments. Though Edwards, Orzano, and Bell already represent the majority voting block of SRC Hospital Investments, on information and belief, the remaining two individuals on the SRC Board of Managers—Adam Grossman and Joshua Morris—also sit on Pipeline Health System’s Board of Managers, meaning that the exact same five people sit on the Board of Managers of and control both companies.

Pipeline Health System Is Playing The Exact Same Shell Game With Its Two Other Illinois Hospitals.

98. Unfortunately, Defendant Pipeline Health System’s fraudulent and deceptive corporate governance strategy is by no means limited to its dealings with Westlake Hospital.

99. Westlake Hospital was only one of three Illinois hospitals that Pipeline Health System purchased from Tenet Healthcare Corporation on January 31, 2019. The other two hospitals that Pipeline Health System purchased are Louis A. Weiss Memorial Hospital (“Weiss”) in Chicago and West Suburban Medical Center (“West Suburban”) in Oak Park. Amazingly, Pipeline Health System used the exact same tactics to conceal its ownership and control of Weiss and West Suburban from the Review Board, the State of Illinois, and the elected officials and residents of Chicago and Oak Park.

100. Specifically, when Pipeline Health System submitted applications to the Review Board on September 6, 2018 seeking permission to purchase Weiss and West Suburban, the Weiss application stated that Weiss would be purchased by SRC Hospital Investments—the

exact same “parent” company that was used to purchase Westlake Hospital and is exclusively controlled by Pipeline Health System—and its wholly owned subsidiary, Pipeline-Weiss Memorial Hospital LLC, and the West Suburban application stated that West Suburban would be purchased by SRC Hospital Investments and its wholly owned subsidiary, Pipeline-West Suburban Medical Center LLC.

101. Likewise, Pipeline Health System President Nicholas Orzano—the same individual that signed the Westlake Hospital application in his capacity as CEO of both Pipeline-Westlake Hospital and SRC Hospital Investments—also signed both the Weiss and West Suburban applications in his capacity as CEO of Pipeline-Weiss Memorial Hospital LLC, Pipeline-West Suburban Medical Center LLC, and SRC Hospital Investments. Pipeline Health System President Nicholas Orzano also certified under penalty of perjury that the information submitted by Pipeline-Weiss Memorial Hospital LLC, Pipeline-West Suburban Medical Center LLC, and SRC Hospital Investments was complete and correct even though he specifically knew that the information was false, as the true owner and operator of Weiss and West Suburban—Pipeline Health System—was not identified in either application and its existence was altogether concealed from the Review Board. Both applications were approved on October 30, 2018.

102. To be sure, Pipeline-Weiss Memorial Hospital LLC, Pipeline-West Suburban Medical Center LLC, and SRC Hospital Investments are sham entities that have no independent officers or executives and no decision-making authority whatsoever, and Pipeline Health System is currently using these sham entities to own, operate, and control Weiss and West Suburban, just as it did with Westlake Hospital. In fact, all three entities share the exact same corporate headquarters—which is actually just a single office suite in a building in El Segundo, California—as both Pipeline Health System and the Pipeline-Westlake Hospital entity.

103. Pipeline Health System’s flagrant manipulation of the system endangers not only the former patients and employees of Westlake Hospital, but also everyone in the Chicago and Oak Park communities, especially those that currently rely on Weiss and West Suburban for health care and employment. Unlike non-profit hospitals, Weiss and West Suburban are owned by a for-profit investment firm that cares about one thing and one thing only: money. Just as it did with Westlake Hospital, Pipeline Health System structured the Weiss and West Suburban hospital entities as disposable objects that can be thrown away—or forced into Chapter 7 liquidation—as soon as they are no longer profitable or profitable enough for Pipeline Health System’s investors.

FIRST CAUSE OF ACTION
VIOLATION OF MELROSE PARK MUNICIPAL CODE § 9.04.030

104. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

105. Under the Village Code of Melrose Park, “[i]t is unlawful for any person in the village to obtain possession of any goods, property or thing of value by any false proceedings or by cheating or by fraud of any kind.” Melrose Park Mun. Code § 9.04.030.

106. Defendants obtained possession of both property (the hospital itself) and a thing of value (the benefits provided under the RDA) through the intentional misrepresentations and fraudulent omissions described herein that were made to the Village by Defendant Whitaker and Defendant Edwards, on behalf of the Private Equity Defendants and in furtherance of their fraudulent scheme, and to the Village residents, and to the community members that rely on Westlake, which is located in the Village, for medical services, including safety net services.

107. Plaintiff seeks all fines and penalties allowable under Melrose Park Mun. Code § 1.16.010 for each and every violation of the ordinance.

SECOND CAUSE OF ACTION
VIOLATION OF MELROSE PARK MUNICIPAL CODE § 9.08.020

108. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

109. Under the Village Code of Melrose Park, “[i]t is unlawful for any person to interfere with, hinder or resist any officer or employee of the village, while engaged in the duties of his or her office or employment.” Melrose Park Mun. Code § 9.08.020.

110. Each of the Defendants interfered with the work of the Village Mayor and the Village Council by intentionally misrepresenting and/or fraudulently concealing material facts about their intentions to close Westlake Hospital immediately upon purchase. These misrepresentations and omissions were communicated and withheld by Defendants Whitaker and Edwards, on behalf of the Private Equity Defendants and in furtherance of their fraudulent scheme, during in person meetings with Village officers in 2018, as described herein.

111. Plaintiff seeks all fines and penalties allowable under Melrose Park Mun. Code § 1.16.010 for each and every violation of the ordinance.

THIRD CAUSE OF ACTION
VIOLATION OF MELROSE PARK MUNICIPAL CODE § 5.06.010 et seq.

112. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

113. All Defendants are “persons” as defined by Melrose Park Mun. Code § 5.06.010.

114. The more than 500 individuals who worked at Westlake Hospital were “Villager[s],” as defined by Melrose Park Mun. Code § 5.06.010.

115. Defendants engaged in fraud and deceptive practices while conducting trade or business in the Village by (1) through Jim Edwards and Eric Whitaker, making false and misleading statements to local media and newspapers about Defendants’ plans with Westlake Hospital, and (2) publicly representing, including to the Illinois Health Facilities and Services

Review Board, that, if allowed to purchase Westlake Hospital, they would keep it open, not discontinue any services, and continue to provide charity care for at least two (2) years. These actions violate Melrose Park Mun. Code § 5.06.020.

116. Defendants Whitaker and Edwards represented to the Village that the Hospital would remain open after the Private Equity Defendants purchased it and intentionally hid the fact that Defendants intended to close it. These actions violate Melrose Park Mun. Code § 5.06.030.

117. The Private Equity Defendants aided and abetted these false statements. Defendant Whitaker, the president of TWG Partners and a principal of Pipeline Health Systems, and Defendant Edwards, the chief executive officer of Pipeline Health Systems and SRC Hospital Investments, were both incited, directed, and/or compelled to make these false statements by Pipeline Health Systems and SRC Hospital Investments.

118. Plaintiff seeks all fines and penalties allowable under Melrose Park Mun. Code § 5.06.050 for each and every violation of the ordinance.

FOURTH CAUSE OF ACTION FRAUDULENT MISREPRESENTATION

119. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

120. The Private Equity Defendants—themselves and through the Individual Defendants—repeatedly represented that Westlake Hospital would not close and that it would continue operating and serving patients in the Melrose Park community and surrounding area. These statements were made publicly, directly to the Village, and directly to the Review Board.

121. Defendant Orzano also made statements and representations that Westlake Hospital would not close.

122. Defendant Whitaker made these statements directly to the Village and, on information and belief, specifically approved or directed the statements before they were

submitted to the Review Board as a principal of TWG Partners and, shortly thereafter, Pipeline.

123. Defendant Edwards misrepresented that Westlake Hospital would not close, directly to the Village, by failing to disclose it when discussing the future of Westlake Hospital with Mayor Serpico.

124. All Defendants knew that these representations were false at the time they were made.

125. These representations were material to the Village, the Review Board, and to the members of the community that rely on Westlake for essential medical services.

126. Defendant Whitaker, on behalf of the Private Equity Defendants, intended for his statements to deceive the Village, the Review Board, and the public.

127. The Village relied upon these statements, and as a foreseeable consequence of these statements, waived its right to oppose the sale of Westlake to Defendants and waived its right to seek a public hearing before the Review Board.

128. As a direct and foreseeable consequence of these statements, the Village also consented to the assignment of the benefits of the RDA to Pipeline.

129. Had the Village known Whitaker's and the Private Equity Defendants' representations were false, it would have opposed the sale, sought a public hearing in front of the Review Board, and rejected any assignment of the RDA.

130. The Village has suffered and will suffer considerable injury resulting from the fraud Defendant perpetrated on the Village, the Board, and the community.

131. The Village is directly and proximately harmed by the increased costs posed by Westlake's closure. Melrose Park pays for the Village of Melrose Park Fire Department, including emergency ambulance services, and the Village of Melrose Park Police Department.

Even if patients can be absorbed by nearby hospitals—an impossibility for many, given Westlake’s role as a safety net provider—the increased distance to care endangers Village patients and poses additional costs in ambulance services. The lack of other health care options in the area will also increase emergency calls that could otherwise have been prevented.

132. As the only facility providing methadone treatment in the area, Westlake mitigates and prevents some of the worst effects of the opioid crisis from reaching the heart of Melrose Park. While the hospital is shuttered, the tremendous costs of the opioid crisis will rise: the significant taxpayer money that the Village spends to combat opioid abuse and addiction, including increased use of ambulance services, increased use of police services, and increased administrations of naloxone.

133. The Village also relied on Defendants’ representations about keeping Westlake open when it determined its budget for 2019, which relies upon the more than \$1 million in annual property taxes that the Village receives from Westlake. With Westlake is closed, those funds will no longer be paid to Plaintiff.

FIFTH CAUSE OF ACTION CIVIL CONSPIRACY

134. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

135. A civil conspiracy is a combination of two or more persons to accomplish an unlawful end or to accomplish a lawful end by unlawful means. *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62 (1994).

136. Each of the Defendants acted tortiously in concert with each other in pursuit of a common goal: to profit from the acquisition, closure, and sale of Westlake Hospital and all of its assets.

137. Each of the Defendants agreed to, and did, pursue a common strategy to convince

the Village, community members, elected officials, the Review Board, and the public that if allowed to purchase Westlake, they would keep the hospital open and continue providing medical services, including safety net services, to the community. This agreement is evidenced by the Private Equity Defendants' Change of Ownership Application (Ex. 1.), and the knowingly false statements contained therein and affirmed by Defendant Orzano. (*See id.* at 0150-0151.) Defendant Whitaker, on information and belief, agreed to this scheme and approved and directed that the statements be made, as a principal of TWG Partners and as a soon-to-be principal of Pipeline. Defendant Edwards, as CEO of Pipeline Health Systems, approved and directed that these statements be made.

138. Each of the Defendants knew that if they told the truth about what they would do with Westlake, the Village, elected officials, and the tens of thousands of community members that relied on the hospital would exercise their rights under the Planning Act to oppose their efforts, lodge formal objections with the Review Board, and exercise their right to a public hearing, which Defendants wanted to avoid at all costs. Each of the Defendants also knew that if they told the truth about closing Westlake, the Village would have denied their request for assignment of the RDA.

139. As such, each of the Defendants agreed with each other that Defendants Whitaker and Edwards would disseminate false and deceptive statements to the Village and other elected officials to convince them that if allowed to purchase Westlake, they would keep the hospital open and continue providing medical services, including safety net services, to the community. Whitaker made these misrepresentations to the Village beginning in or around June 2018 and continuing through at least September 2018.

140. Defendant Whitaker, Defendant Edwards, and the Private Equity Defendants

knew that the Village and the members of the community would rely on and be misled by these misrepresentations.

141. Defendants' conduct was malicious, purposeful, intentional, and unlawful, and proximately caused the direct and foreseeable consequences of this conduct discussed herein.

142. Plaintiffs respectfully request this Court enter an order awarding judgment in their favor to compensate them for injuries sustained as a result of Defendants' misconduct, for restitution of any money acquired as a result thereof, and awarding such other relief as this Court may deem just.

143. Plaintiffs also request this Court enter an order awarding declaratory relief by declaring that Defendants' activities constituted a civil conspiracy, enjoining them from engaging in any further activities constituting civil conspiracy, and providing injunctive relief requiring them to abate any harm caused by their civil conspiracy.

SIXTH CAUSE OF ACTION PUBLIC NUISANCE

144. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

145. Under Illinois law, a public nuisance is the "doing of or the failure to do something that injuriously affects the safety, health or morals of the public, or works some substantial annoyance, inconvenience or injury to the public." *Burns v. Simon Props. Grp., LLP*, 2013 IL App (5th) 120325, ¶ 6. A public nuisance claim must identify "(1) the existence of a public right; (2) a substantial and unreasonable interference with that right by the defendant; (3) proximate cause; and (4) injury." *Id.*

146. Plaintiff's residents have a common right to be free from conduct creating an unreasonable risk of harm to public health, morals, comfort, welfare, and safety in their

community, and to be free from conduct creating a disturbance and reasonable apprehension of danger to people and property.

147. As described herein, Defendants have created a continuing public nuisance in Plaintiff's community through their conduct, including their fraudulent scheme to shut down Westlake and deprive tens of thousands of community members of health care services that were dependent on Westlake's safety net services and charity care.

148. This has caused and will cause a significant and unreasonable interference with the public health, safety, welfare, peace, comfort, and convenience of Plaintiff's citizens.

149. As such, Defendants have individually and collectively created an unreasonable public nuisance in Plaintiff's community.

150. Plaintiff respectfully requests this Court enter an order awarding judgment in its favor, including damages and reasonable attorneys' fees, and awarding Plaintiff such other and further relief as this Court may deem just.

151. Plaintiff also requests this Court enter an order awarding declaratory relief by declaring that Defendants' activities constituted a public nuisance, enjoining Defendants from engaging in any further activities constituting the public nuisance, and requiring Defendants to abate the public nuisance caused by their misconduct.

152. Defendants' conduct will cause Plaintiff to spend additional sums of money every year to abate the nuisance caused by Defendants' fraudulent actions through increased expenditures on public services, including medical, emergency, fire, and police services, as well as the increased costs necessary for its ambulances to transport patients to emergency rooms located outside Melrose Park. Defendants' conduct will also result in the loss of property tax revenue from Westlake, which among other things, Plaintiff relied on when determining its

budget for 2019.

SEVENTH CAUSE OF ACTION
DECLARATORY JUDGMENT

153. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

154. Pursuant to 735 ILCS 5/2-701, this Court may “make binding declarations of rights, having the force of final judgments . . . including the determination . . . of the construction of any statute, municipal ordinance, or other governmental regulation . . . and a declaration of the rights of the parties interested.”

155. Such a declaration of rights “may be obtained . . . as incident to or part of a complaint . . . seeking other relief as well.” 735 ILCS 5/2-701(b).

156. Plaintiff seeks a judgment declaring that Defendants have violated Melrose Park Municipal Code §§ 9.04.030, 9.08.020, and 5.06.010, as alleged above.

157. Plaintiff further seeks a judgment that Defendants have defrauded the Village and engaged in a civil conspiracy to do so.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Village of Melrose Park respectfully requests that the Court enter an order granting the following relief:

- A. Declaring that Defendants violated Melrose Park Municipal Code §§ 9.04.030, 9.08.020, and 5.06.010 *et seq.*;
- B. Declaring that Defendants have made fraudulent misrepresentations to the Plaintiff and engaged in a civil conspiracy;
- C. Declaring that Defendants have created a public nuisance;

- D. Imposing fines in accordance with Village ordinances for each and every violation thereof in an amount to be determined at trial against all Defendants except Pipeline-Westlake LLC;
- E. Awarding damages incurred by Plaintiff as a result of Defendants' misconduct to be determined at trial, or in the alternative, awarding nominal damages, against all Defendants except Pipeline-Westlake Hospital LLC;
- F. Awarding such and other injunctive and declaratory relief as is necessary;
- G. Awarding Plaintiff compensatory and punitive damages against Defendants except Pipeline-Westlake Hospital LLC;
- H. Awarding Plaintiff reasonable attorneys' fees and costs from all Defendants except Pipeline-Westlake Hospital LLC;
- I. Awarding Plaintiff pre- and post-judgment interest from all Defendants except Pipeline-Westlake Hospital LLC; and
- J. Awarding such other and further relief as equity and justice may require.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

VILLAGE OF MELROSE PARK,

Dated: January 14, 2020

By: /s/ Ari Scharg
One of Plaintiff's Attorneys

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned, in his capacity as Mayor of the Village of Melrose Park, certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: January 14, 2020



Ronald Serpico
Mayor of the Village of Melrose Park