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10 **UNITED STATES DISTRICT COURT**  
11 **CENTRAL DISTRICT OF CALIFORNIA**  
12 **EASTERN DIVISION**

13 DANIELLE GAMINO, individually  
14 and on behalf of all others similarly  
15 situated,

16 *Plaintiff,*

17 v.

18 SPCP GROUP, LLC

19 *Defendant*

20 and

21 KPC HEALTHCARE, INC.  
22 EMPLOYEE STOCK OWNERSHIP  
23 PLAN

24 *Nominal Defendant*

No. 5:21-cv-01466-SB-SHK

**FIRST AMENDED COMPLAINT  
FOR VIOLATIONS OF ERISA**

**CLASS ACTION**

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1 **I. JURISDICTION AND VENUE**

2 1. Plaintiff brings this action under the Employee Retirement Income  
3 Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001 *et seq.* This Court has subject  
4 matter jurisdiction over this action pursuant to ERISA § 502(e)(2), 29 U.S.C. §  
5 1132(e)(2), because this action arises under the laws of the United States and  
6 pursuant to 29 U.S.C. § 1132(e)(1).

7 2. This Court has personal jurisdiction over Defendant SPCP Group  
8 pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

9 3. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29  
10 U.S.C. § 1132(e)(2), because the KPC ESOP is administered in this District, and  
11 the breaches and violations giving rise to the claims occurred in this District.

12 4. Pursuant to Local Rule 83-1.3, this action is a Related Case to *Gamino*  
13 *v. KPC Healthcare Holdings Inc, et al.*, Case No.: 5:20-cv-01126-SB (SHK) (filed  
14 June 1, 2020).

15 **II. INTRODUCTION**

16 5. This ERISA action is brought on behalf of a Class of participants in  
17 and beneficiaries of the KPC Healthcare, Inc. Employee Stock Ownership Plan  
18 (“the KPC ESOP,” “the ESOP” or “the Plan”) to obtain appropriate equitable relief  
19 against Defendant for its knowing participation in breaches of fiduciary duties and  
20 transactions prohibited by ERISA. These claims arise out of a transaction that took  
21 place on August 28, 2015 (the “2015 ESOP Transaction”), through which Kali  
22 Pradip Chaudhuri sold 100% of the stock of KPC Healthcare Holdings, Inc.  
23 (“KPC”) to the ESOP. This transaction was not designed to be in the best interests  
24 of the ESOP participants and caused the ESOP to pay in excess of fair market  
25 value. Indeed, the ESOP paid a price more than 400% greater than the price that  
26 Kali Pradip Chaudhuri had been willing to pay for and at which he likely acquired  
27 the company just two years earlier—even before taking into account any other  
28 consideration that Dr. Chaudhuri received as part of the 2015 ESOP Transaction.

1 Defendant SPCP Group, together with Dr. Chaudhuri, planned the transaction  
2 through which Dr. Chaudhuri acquired KPC one year before he sold it to the ESOP  
3 and knowingly participated in the 2015 ESOP Transaction, despite having more  
4 than sufficient information to know that the Transaction was prohibited by ERISA  
5 and a violation of the ESOP fiduciaries' duties to the Plan and its participants.

6 6. Through this action, Plaintiff seeks to enforce her rights and those of  
7 other participants in the Plan under ERISA, to obtain appropriate equitable relief as  
8 a result of Defendant's knowing participation in breaches of fiduciary duty and  
9 prohibited transactions.

### 10 **III. INTRA-DISTRICT ASSIGNMENT**

11 7. Plaintiff resides in the State of Georgia.

12 8. Based on Plaintiff's counsel's investigation, Defendant SPCP Group,  
13 LLC is located in the State of Delaware.

14 9. The alleged breaches took place in the Eastern Division of the Central  
15 District of California. This action is a Related Case to *Gamino v. KPC Healthcare*  
16 *Holdings Inc, et al.*, Case No.: 5:20-cv-01126-SB (SHK) (filed June 1, 2020).

### 17 **IV. PARTIES**

#### 18 **Plaintiff**

19 10. Plaintiff Danielle Gamino is a former employee of KPC. Plaintiff  
20 Gamino was employed as a medical coder by KPC from May 29, 2008 through  
21 December 17, 2016, first at Coastal Communities Hospital (now known as South  
22 Coast Global Medical Center) and then at the Orange County Global Medical  
23 Center, both in Santa Ana, California. As a result of her employment, Plaintiff  
24 Gamino became and is a participant, as defined in ERISA § 3(7), 29 U.S.C. §  
25 1002(7), in the KPC ESOP because she has a colorable claim for additional  
26 benefits under the Plan. Plaintiff Gamino resides in Buford, Georgia.

1           **Defendant**

2           11. Defendant SPCP Group, LLC (“SPCP Group”) is a Delaware limited  
3 liability company and an investment management firm affiliated with Silver Point  
4 Capital Partners, a hedge fund.

5           **Nominal Defendant.**

6           12. KPC Healthcare, Inc. Employee Stock Ownership Plan, a/k/a the KPC  
7 Healthcare, Inc. ESOP (the “KPC ESOP”), is an “employee pension benefit plan”  
8 within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A). As the Plan  
9 Administer is located in Riverside, California, the Plan is also believed to be  
10 administered in Riverside, California. The ESOP purports to be a “defined  
11 contribution plan” within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34),  
12 and an employee stock ownership plan under ERISA § 407(d)(6) that was intended  
13 to meet the requirements of Section 4975(e)(7) of the Internal Revenue Code (the  
14 “Code”) and IRS Regulations § 54.4975-11. The written instrument, within the  
15 meaning of ERISA § 402, 29 U.S.C. § 1102, by which the Plan is maintained is the  
16 KPC Healthcare, Inc. Employee Stock Ownership Plan (the “Plan Document”),  
17 effective as of April 1, 2015.

18           **Relevant Non-Parties to This Action Who Are Defendants in *Gamino v.***  
19           ***KPC Healthcare Holdings, Inc.* Case No.: 5:20-cv-01126-SB (SHK) (filed**  
20           **June 1, 2020)**

21           13. KPC Healthcare Holdings, Inc. (“KPC”) is and has been a California  
22 Corporation with its principal place of business in Riverside, California (according  
23 to the Summary Plan Description) or Corona, California (according to statements  
24 of information filed with the California Secretary of State). Since the inception of  
25 the ESOP, KPC has been the sponsor of the ESOP within the meaning of ERISA §  
26 3(16)(B), 29 U.S.C. § 1002(16)(B). Pursuant to KPC’s authority to appoint and  
27 remove other fiduciaries of the ESOP, including the Trustee and the members of  
28 the ESOP Committee, KPC is and was a fiduciary of the ESOP under ERISA §  
3(21)(A), 29 U.S.C. § 1002(21)(A). The current version of the Summary Plan

1 Description for the ESOP identifies KPC’s address as 6800 Indiana Avenue, Suite  
2 130, Riverside CA 92506 (i.e. in the Eastern Division of this District).

3 *The ESOP Committee & the Committee Members*

4 14. KPC Healthcare, Inc. Employee Stock Ownership Plan Committee  
5 (the “ESOP Committee”) is identified as the plan administrator in the ESOP’s Plan  
6 Document within the meaning of ERISA § 3(16)(A), 29 U.S.C § 1002(16)(A).  
7 Pursuant to Section 11.15 of the written instrument of the Plan, the ESOP  
8 Committee is one of the named fiduciaries of the ESOP within the meaning of  
9 ERISA § 402, 29 U.S.C. § 1102. The ESOP Committee meets the definition of a  
10 person within the meaning of ERISA § 3(9), 29 U.S.C. § 1002(9), because ERISA  
11 defines the term person broadly and because a committee meets the definition of an  
12 association or an unincorporated organization. The Committee’s address is  
13 believed to be 6800 Indiana Avenue, Suite 130, Riverside CA 92506 (i.e. in the  
14 Eastern Division of this District).

15 15. The “Committee Defendants” means the ESOP Committee and the  
16 members of the Committee. According to the notes to the financial statements in  
17 Form 5500s filed with the United States Department of Labor, all members of the  
18 Board of Directors serve and have served on the ESOP Committee. As a result of  
19 the ESOP Committee being designated as the Plan Administrator and a named  
20 fiduciary of the ESOP under the terms of the Plan, and because the ESOP  
21 Committee and its members having discretionary authority or responsibility for the  
22 administration of the Plan, the ESOP Committee and its members are and were  
23 fiduciaries of the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C §  
24 1002(21)(A).

25 *The Trustee*

26 16. Alerus Financial, N.A. (“Alerus”) acted as Trustee of the ESOP in  
27 connection with the 2015 ESOP Transaction. Alerus was appointed as the Trustee  
28 of the KPC ESOP pursuant to the KPC Healthcare, Inc. Employee Stock

1 Ownership Trust dated April 1, 2015 (the “Trust Agreement”). Since the 2015  
2 ESOP Transaction, Alerus has continued to be the Trustee of the KPC ESOP.  
3 Pursuant to Section 11.15 of the written instrument of the Plan, the Trustee is one  
4 of the named fiduciaries of the ESOP within the meaning of ERISA § 402, 29  
5 U.S.C. § 1102. As a result of being the Trustee of the KPC ESOP, Alerus has been  
6 a fiduciary of the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. §  
7 1002(21)(A). Alerus is headquartered in Grand Forks, North Dakota.

8 *The Board of Directors*

9 17. Kali Pradip Chaudhuri (“Dr. Chaudhuri”) is the Chief Executive  
10 Officer of KPC and the chairman of its board of directors. By virtue of his position  
11 as CEO, membership on the KPC Board of Directors and his membership on the  
12 ESOP Committee, Kali Pradip Chaudhuri is and has been a fiduciary of the ESOP  
13 within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), since at least  
14 the time of the 2015 ESOP Transaction. At the time of the 2015 ESOP  
15 Transaction, Dr. Chaudhuri was a “party in interest” as to the ESOP as defined in  
16 ERISA § 3(14) (A) and (H), 29 U.S.C. § 1002(14) (A) and (H). Prior to the 2015  
17 ESOP Transaction, Kali Pradip Chaudhuri was the sole shareholder of KPC. He  
18 sold his shares to the ESOP in the 2015 ESOP Transaction. Dr. Chaudhuri resides  
19 in Hemet, CA in Riverside County (i.e., in the Eastern Division of this District).

20 18. Kali Priyo Chaudhuri, the son of Kali Pradip Chaudhuri, is the Chief  
21 Financial Officer of KPC, and is a member of its Board of Directors of KPC. Kali  
22 Priyo Chaudhuri was a member of the Board at the time of the 2015 ESOP  
23 Transaction. By virtue of his membership on the KPC Board of Directors and in  
24 turn, membership on the ESOP Committee, Kali Priyo Chaudhuri is and has been a  
25 fiduciary of the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. §  
26 1002(21)(A), since at least the time of 2015 ESOP Transaction. Kali Priyo  
27 Chaudhuri resides in Tustin, CA in Orange County (i.e., in the Southern Division  
28 of this District).

1           19.     Amelia Hippert is a member of the KPC Board of Directors. Amelia  
2 Hippert was appointed to the Board after the 2015 ESOP Transaction. By virtue of  
3 her membership on the KPC Board of Directors, and in turn, membership on the  
4 ESOP Committee, Amelia Hippert is and has been a fiduciary of the ESOP within  
5 the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) since at least the time  
6 of her appointment to the KPC Board of Directors. Amelia Hippert resides in  
7 Hemet, CA in Riverside County (i.e., in the Eastern Division of this District).

8           20.     William E. Thomas is the secretary of KPC, in-house counsel for  
9 KPC, and a member of the Board of Directors of KPC. William E. Thomas was a  
10 member of the Board at the time of the 2015 ESOP Transaction. Upon information  
11 and belief, Thomas has been Kali Pradip Chaudhuri’s long-standing attorney. By  
12 virtue of his membership on the KPC Board of Directors, and in turn, membership  
13 on the ESOP Committee, William E. Thomas is and has been a fiduciary of the  
14 ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), since at  
15 least the time of 2015 ESOP Transaction. Upon information and belief, Mr.  
16 Thomas resides in Riverside County (i.e., the Eastern Division of this District).

17           21.     Lori Van Arsdale is a member of the KPC board of directors. Ms. Van  
18 Arsdale was appointed to the Board after the 2015 ESOP Transaction. By virtue of  
19 her membership on the KPC Board of Directors, and in turn, membership on the  
20 ESOP Committee, Ms. Van Arsdale is and has been at all relevant times been a  
21 fiduciary of the ESOP within the meaning of ERISA § 3(21)(A), 29 U.S.C. §  
22 1002(21)(A), since at least the time of her appointment to the KPC Board of  
23 Directors. Ms. Van Arsdale resides in Hemet, CA in Riverside County (i.e., in the  
24 Eastern Division of this District).

25           22.     The “Directors” are collectively referred to as Kali Pradip Chaudhuri,  
26 Kali Priyo Chaudhuri, Amelia Hippert, William E. Thomas, and Lori Van Arsdale.



1 **V. CLASS ACTION ALLEGATIONS**

2 23. Plaintiff brings these claims as a class action pursuant to Fed. R. Civ.  
3 P. 23 (a) and (b), on behalf of the following Class:

4 All participants in the KPC ESOP from August 28, 2015 or any time  
5 thereafter (unless they terminated employment without vesting in the ESOP  
6 and did not subsequently vest) and those participants' beneficiaries.

7 Excluded from the Class are (a) Defendant SPCP Group and all Defendants  
8 named in *Gamino v. KPC Healthcare Holdings Inc, et al.*, Case No.: 5:20-  
9 cv-01126-SB (SHK) (filed June 1, 2020), (b) any fiduciary of the Plan; (c)  
10 the officers and directors of KPC or of any entity in which one of the  
11 individual Defendants named in *Gamino v. KPC Healthcare Holdings Inc.,*  
12 *et al.* has a controlling interest; (d) the immediate family members of any of  
13 the foregoing excluded persons, and (e) the legal representatives, successors,  
14 and assigns of any such excluded persons.

15 **Impracticability of Joinder**

16 24. The members of the Class are so numerous that joinder of all  
17 members is impracticable. According to the 2018 Form 5500 filed with the  
18 Department of Labor, which is the most recent available Form 5500, there were  
19 2,655 participants (including 2,132 active participants, 228 retired or separated  
20 participants receiving benefits and 283 retired or separated participants entitled to  
21 future benefits) within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), in the  
22 ESOP as of August 31, 2019.

23 **Commonality**

24 25. The issues of liability are common to all members of the Class and are  
25 capable of common answers as those issues primarily focus on Defendants' acts  
26 (or failure to act). Questions of law and fact common to the Plaintiff Class as a  
27 whole include, but are not limited to, the following:  
28



1 a. Whether Alerus caused the ESOP to engage in prohibited  
2 transactions under ERISA by causing or permitting the ESOP to purchase  
3 KPC stock for more than adequate consideration in the 2015 ESOP  
4 Transaction;

5 b. Whether Alerus engaged in a prudent investigation of the  
6 proposed purchase of KPC stock by the ESOP in the 2015 ESOP  
7 Transaction;

8 c. Whether Alerus breached its fiduciary duty to ESOP  
9 participants by causing the ESOP to purchase KPC stock in 2015 for more  
10 than fair market value;

11 d. Whether KPC (and/or the Director Defendants) breached their  
12 fiduciary duties by failing to adequately monitor the ESOP's Trustee and the  
13 Committee Defendants;

14 e. Whether Defendant SPCP Group knowingly participated in  
15 prohibited transactions or in fiduciary breaches by Alerus;

16 f. The appropriate equitable relief to be awarded as a result of  
17 Defendant's knowing participation in any fiduciary breaches or prohibited  
18 transactions.

19 **Typicality**

20 26. Plaintiff's claims are typical of those of the Class because their claims  
21 arise from the same event, practice and/or course of conduct. Specifically, Plaintiff,  
22 on behalf of the Class, alleges that Defendant knowingly participated in breaches  
23 of fiduciary duties and prohibited transactions in violation of ERISA in connection  
24 with the sale of stock to the ESOP. Plaintiff challenges the legality and  
25 appropriateness of a plan-wide transaction and disclosures, and Plaintiff like other  
26 ESOP participants in the Class, has received less in her ESOP account based on the  
27 same per share purchase price of KPC stock and continue to suffer such losses in  
28 the present.

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**Adequacy**

27. Plaintiff will fairly and adequately represent and protect the interests of the Class.

28. Plaintiff does not have any interests antagonistic to or in conflict with those of the Class.

29. Defendant does not have any unique defenses against Plaintiff that would interfere with Plaintiff’s representation of the Class.

30. Plaintiff is represented by counsel with experience in complex class actions, ERISA, and with particular experience and expertise in ESOP litigation. Plaintiff’s counsel has been appointed as class counsel in numerous class action ESOP cases.

**Fed. R. Civ. P. Rule 23(b)(1)**

31. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(A). This action challenges whether Defendants knowingly participated in fiduciary breaches that affected the ESOP as a whole. As a result, prosecution of separate actions by individual members would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct relating to the Plan.

32. Class certification is also appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(B). Resolving whether Defendant participated in fiduciary breaches or prohibited transactions with respect to the Plan would, as a practical matter, be dispositive of the interests of the other participants in the ESOP even if they are not parties to this litigation and would substantially impair or impede their ability to protect their interests if they are not made parties to this litigation by being included in the Class.

1           **Fed. R. Civ. P. Rule 23(b)(2)**

2           33. Class certification is appropriate pursuant to Fed. R. Civ. P. 23(b)(2)  
3 because Defendant has acted or refused to act on grounds generally applicable to  
4 the Class, making appropriate declaratory and injunctive relief with respect to  
5 Plaintiff and the Class as a whole. This action challenges whether Defendant  
6 knowingly participated in breaches of fiduciary duties or otherwise violated  
7 ERISA as to the ESOP as a whole. The members of the Class are entitled to  
8 declaratory and injunctive relief to remedy Defendant's fiduciary violations. As  
9 ERISA is based on trust law, any monetary relief consists of equitable monetary  
10 relief and is either provided directly by the declaratory or injunctive relief or flows  
11 as a necessary consequence of that relief.

12           **Fed. R. Civ. P. Rule 23(b)(3)**

13           34. The requirements of Fed. R. Civ. P. 23(b)(3) are also satisfied.  
14 Common questions related to liability will necessarily predominate over any  
15 individual questions precisely because Defendant's obligations were uniform to all  
16 participants and therefore all members of the Class. Plaintiff and all Class members  
17 have been harmed by the ESOP paying more than fair market value for KPC stock  
18 in the 2015 ESOP Transaction in which Defendant knowingly participated. As  
19 relief and any recovery will be on behalf of the Plan, common questions as to  
20 remedies will likewise predominate over any individual issues.

21           35. A class action is a superior method to other available methods for the  
22 fair and efficient adjudication of this action. As the claims are brought on behalf of  
23 the Plan, resolution of the issues in this litigation will be efficiently resolved in a  
24 single proceeding rather than multiple proceedings and each of those individual  
25 proceedings could seek recovery for the entire Plan. The amount to be recovered  
26 by individual Class members is small compared to the expense and burden of  
27 individual prosecution of this action. In addition, class certification is superior  
28 because it will obviate the need for unduly duplicative litigation which might result

1 in inconsistent judgments about Defendant’s duties and liability with regard to the  
2 ESOP.

3 36. The following factors set forth in Rule 23(b)(3) also favor certification  
4 of this case as a class action:

- 5 a. The members of the Class have an interest in a unitary adjudication of  
6 the issues presented in this action for the reasons that this case should  
7 be certified under Rule 23(b)(1).
- 8 b. The only other litigation concerning this controversy was filed by  
9 Plaintiff on behalf of a now certified Class in this District, but does  
10 not include claims against this Defendant.
- 11 c. This District is the most desirable location for concentrating the  
12 litigation for reasons that include (but are not limited to) the  
13 following: (i) KPC is headquartered in this District, (ii) the KPC  
14 ESOP is administered in this District, (iii) certain non-party witnesses  
15 are located in this District, and (iv) this action is a Related Case to  
16 *Gamino v. KPC Healthcare Holdings Inc, et al.*, Case No.: 5:20-cv-  
17 01126-SB (SHK) (filed June 1, 2020).
- 18 d. The names and addresses of the members of the Class are available  
19 from the ESOP. Notice can be provided to all members of the Class to  
20 the extent required by Rule 23.

## 21 **VI. FACTUAL ALLEGATIONS**

### 22 **Dr. Kali Pradip Chaudhuri Finances the Acquisition of Four Hospitals** 23 **Over Community Objections**

24 37. Integrated Healthcare Holdings, Inc. (“Integrated Health”) was  
25 formerly a publicly traded medical holding company. According to Integrated  
26 Health’s Form 10-K for the fiscal year ended March 31, 2013, the company had no  
27 material operations until March 8, 2005, when it acquired four Orange County,  
28 California hospitals previously operated by Tenet Healthcare Corp.: Western

1 Medical Center in Santa Ana; Western Medical Center in Anaheim; Coastal  
2 Communities Hospital in Santa Ana; and Chapman Medical Center in Orange.  
3 Integrated Health purchased the hospitals in part through debt financing provided  
4 by Dr. Chaudhuri.

5 38. According to an article entitled “KPC Healthcare Bets on ESOP”  
6 published in the Orange County Business Journal on March 13, 2017, in 2005 Dr.  
7 Chaudhuri initially led Integrated Health’s bid to acquire the four Tenet hospitals.

8 39. Integrated Health’s acquisition of these hospitals was met with vocal  
9 public opposition because of Dr. Chaudhuri’s involvement. One of Dr.  
10 Chaudhuri’s other companies, KPC Medical Management Inc., went bankrupt  
11 shortly after acquiring the Southern California provider network of MedPartners,  
12 resulting in the abrupt closure of 38 California clinics and abruptly leaving 300,000  
13 patients without medical care.

14 40. The KPC Medical Management bankruptcy was dogged by  
15 allegations of financial mismanagement and self-dealing by Dr. Chaudhuri.  
16 According to an article entitled “KPC Filings Spur More Questions” published by  
17 the California American College of Emergency Physicians in February of 2001, a  
18 bankrupt affiliate of KPC Medical Management paid \$5 million to Dr. Chaudhuri  
19 in January 2000, even as KPC Medical Management was negotiating with HMOs  
20 for a bailout loan. The week before KPC Medical Management filed for  
21 bankruptcy, it paid \$1.5 million to its attorneys, including \$150,000 to Dr.  
22 Chaudhuri’s personal attorney William Thomas (after he had already resigned as  
23 corporate counsel to KPC Medical Management). And creditors alleged that  
24 Chaudhuri had improperly moved assets between KPC Medical Management and  
25 his other businesses.

26 41. According to documents filed in litigation between Dr. Chaudhuri and  
27 William E. Thomas, among others, on the one hand, and two Southern California  
28 physician groups on the other hand, Dr. Chaudhuri systematically looted

1 MedPartners—shutting down facilities, firing doctors and staff members, all under  
2 the pretense of cutting costs. Meanwhile, Dr. Chaudhuri lined his own pockets  
3 while continuing to draw income from MedPartners while refusing to pay  
4 independently contracted specialty physicians. Dr. Chaudhuri even had staff write  
5 checks to show health plans payments were being made while instructing them to  
6 stash those same checks in locked filing cabinets (instead of mailing them). Within  
7 the first 18 months following the MedPartners acquisition, \$30 million in assets  
8 had disappeared from the company and it had run up debts of \$450 million.

9 42. In response to Dr. Chaudhuri’s contemplated involvement in the  
10 Integrated Health purchase of the Tenet hospitals, a spokeswoman for the  
11 California Department of Health Services stated that they had “concerns... about  
12 the applicant’s reputable and responsible character.” California state senators  
13 Joseph Dunn and Deborah Ortiz stated in a letter to the director of the DHS that  
14 they were “deeply concerned” about Chaudhuri’s involvement in the venture and  
15 sought “assurances that Dr. Chaudhuri’s role would not result in the [Western  
16 Medical-Santa Ana] hospital going the KPC route.”

17 43. According to a January 27, 2005 OC Weekly article entitled, “Now  
18 With Less Chaudhuri!” then current and former chiefs of staff at the Western  
19 Medical of Santa Ana trauma facility, Michael Fitzgibbons, and Robert Steedman,  
20 opposed the deal because of Dr. Chaudhuri’s involvement. Together with more  
21 than 70 other doctors, they created a competing acquisition group, Western  
22 Medical Center Acquisition, LLC, and organized protests of the Integrated Health  
23 purchase. But Fitzgibbons and Steedman were intimidated into silence and  
24 acquiescence to the Integrated Health transaction by Dr. Chaudhuri’s litigation  
25 threats. Following the acquisition, Fitzgibbons would continue to face retaliation.  
26 The CEO of Integrated Health, Bruce Mogel, planted a loaded handgun in  
27 Fitzgibbon’s car and called the police on him. Mogel also caused Fitzgibbon’s  
28 daughter to be in a serious auto accident after her tires were slashed. Fitzgibbon

1 would later win a \$5.7 million jury verdict against both Integrated Health and  
2 Mogel for this conduct.

3 44. As a result of the opposition by the public, doctors, regulatory  
4 authorities, and legislators to Chaudhuri's involvement in another acquisition of  
5 medical facilities, Dr. Chaudhuri reduced his planned stake in Integrated Health  
6 and its acquisition of the Tenet hospitals. According to a March 21, 2005 article in  
7 the Los Angeles Times entitled "Doctors Operate This Company," Dr. Chaudhuri  
8 took a reduced role at Integrated Health as part of its acquisition of the Tenet  
9 hospitals, providing debt financing for the transaction instead of a substantial  
10 equity investment. Cardiologist Anil Shah ("Shah") and a consortium of doctors  
11 led by him, Orange County Physicians Investment Network LLC ("OCPIN")  
12 provided the bulk of the equity investment and took an 83% ownership interest in  
13 Integrated Health. Chaudhuri also owned 49% of a real estate subsidiary formed by  
14 OCPIN to own land associated with three of the four hospitals. And Dr. Chaudhuri  
15 and his lawyer—William E. Thomas—retained a right to purchase up to 25% of  
16 Integrated Health.

17 45. In that same March 21, 2005 article in the Los Angeles Times, Shah  
18 claimed that no one should be concerned by Dr. Chaudhuri's involvement in  
19 Integrated Health, because "He will never have a controlling interest." At the same  
20 time, according to the California Healthcare Daily Edition, Larry Anderson,  
21 president of Integrated Health, "repeatedly assured critics that Chaudhuri would  
22 have no role in the daily operations of the facilities...."

23 46. On information and belief, Defendant SPCP was aware of allegations  
24 of past improprieties by Dr. Chaudhuri, including through it and/or its affiliates'  
25 activities as investment partners with Dr. Chaudhuri in Integrated Health.

### 26 **Integrated Health's Stock Performance & Value 2010 to 2013**

27 47. From April 2010 to March 2011, shares of Integrated Health traded on  
28 the OTCQB Venture Market at prices between \$0.02 and \$0.07 per share. Based



1 on the 255,307,262 shares of common stock of Integrated Health outstanding  
2 between April 2010 and March 2011, these stock prices imply a market  
3 capitalization and equity value of between approximately \$5.1 million and \$17.9  
4 million during that period.

5 48. According to Integrated Health's 2011 Form 10-K, for the fiscal year  
6 ending March 31, 2011, Integrated Health had assets of \$149.2 million and  
7 liabilities of \$167.8 million, for a stockholders' deficiency of approximately \$18.7  
8 million.

9 49. From April 2011 to March 2012, shares of Integrated Health traded on  
10 the OTCQB Venture Market at prices between \$0.01 and \$0.22 per share. Based  
11 on the 255,307,262 shares of common stock of Integrated Health outstanding  
12 between April 2011 and March 2012, these stock prices imply a market  
13 capitalization and equity value of between approximately \$2.6 million and \$56.2  
14 million during that period.

15 50. According to Integrated Health's 2012 Form 10-K, for the fiscal year  
16 ending March 31, 2012, Integrated Health had assets of \$145 million and liabilities  
17 of \$157 million, for a stockholders' deficiency of \$11 million.

18 51. From April 2012 to March 2013, shares of Integrated Health traded on  
19 the OTCQB Venture Market at prices between \$0.04 and \$0.11 per share. Based  
20 on the 255,307,262 shares of common stock of Integrated Health outstanding at  
21 that time, this implies a market capitalization and equity value of between  
22 approximately \$10.2 million and \$28.1 million between April 2012 and March  
23 2013.

24 52. According to Integrated Health's 2013 Form 10-K, for the fiscal year  
25 ending March 31, 2013, Integrated Health had assets of \$167 million and liabilities  
26 of \$197 million, for a stockholders' deficiency of \$30 million.

27 53. On information and belief, Defendant SPCP was aware of the market  
28 capitalization from time to time reported by Integrated Health in public SEC

1 filings, including by virtue of it and/or its affiliates' activities as investors in  
2 Integrated Health.

3 **Dr. Kali Pradip Chaudhuri Purchases 100% of the Shares of Integrated**  
4 **Health and SPCP Acquires Warrants**

5 54. Between 2005 and 2010, Dr. Chaudhuri gradually acquired stock in  
6 and consolidated his control over Integrated Health. According to an Orange  
7 County Register article dated January 25, 2010 entitled "Controversial doctor gets  
8 more clout at Western Med," by 2010 Dr. Chaudhuri had amassed a majority  
9 ownership interest in Integrated Health in addition to being its principal lender.

10 55. Based on documents publicly filed with the Securities and Exchange  
11 Commission, in April of 2010 Dr. Chaudhuri acquired two sets of common stock  
12 warrants collectively entitling the holder to acquire approximately 309,000 shares  
13 of Integrated Health common stock.

14 56. Based on allegations recited in docket entry no. 211 in *Gamino v.*  
15 *KPC Healthcare Holdings, Inc.*, on April 13, 2010, SPCP acquired a common  
16 stock warrant entitling the holder to acquire 79,182,635 shares of the common  
17 stock of Integrated Health.

18 57. By March 31, 2013, Integrated Health's Form 10-K identified Kali  
19 Pradip Chaudhuri as the beneficial owner of 77.55% of the outstanding stock of the  
20 company.

21 58. On September 12, 2013, Kali Pradip Chaudhuri filed an Amended  
22 Schedule 13D with the SEC stating he "had reached an understanding as to the  
23 principal terms of a proposed transaction in which Dr. Chaudhuri or his affiliate  
24 will acquire an aggregate of 100,110,430 shares of common stock" held by Shah,  
25 OCPIN, and a Mr. Hari S. Lal. Dr. Chaudhuri further stated that after closing those  
26 purchases he intended to "acquire all of the remaining shares of common stock of  
27 the Issuer."  
28

1           59. According to an Amended Schedule 13-D filed by Silver Point  
2 Capital, L.P with the SEC on September 12, 2013, Kali Pradip Chaudhuri agreed to  
3 pay \$0.203 per share to acquire these 100,110,430 shares of Integrated Health  
4 stock and planned “a second step, ‘short-form’ merger in accordance with the laws  
5 of the State of Nevada pursuant to which all other shareholders of the Issuer would  
6 receive merger consideration that would approximate the consideration per share  
7 received by the Selling Shareholders.”

8           60. According to the Form 10-Q filed by Integrated Health with the  
9 Securities and Exchange Commission on November 14, 2013, Integrated Health  
10 had 255,307,262 shares of stock outstanding as of November 7, 2013—the same  
11 number that it had outstanding as of August 7, 2013, according to the Form 10-Q  
12 filed by Integrated Health with the Securities and Exchange Commission on  
13 August 14, 2013.

14           61. The terms Dr. Chaudhuri disclosed under which he would acquire  
15 100% of the outstanding common stock of Integrated Health therefore implied a  
16 value to the entire company of approximately \$51,827,374 (255,307,262 shares at  
17 \$0.203/share).

18           62. Integrated Health then terminated the registration of its securities with  
19 the SEC effective January 7, 2014.

20           63. On information and belief, Dr. Chaudhuri consummated the planned  
21 purchase of 100,110,430 shares of Integrated Health stock from Shah, OCPIN, and  
22 Mr. Lal for \$0.203 per share.

23           64. Based on documents publicly filed with the Securities and Exchange  
24 Commission, Silver Point Capital, L.P. is both a member of Defendant SPCP and  
25 the investment manager of Defendant SPCP. Based on the close affiliate  
26 relationship between Silver Point Capital, L.P., which reported the essential terms  
27 of the transactions by which Dr. Chaudhuri acquired 100% of the outstanding stock  
28

1 of Integrated Health, Defendant SPCP was aware of the terms of those  
2 transactions.

3 65. According to contemporaneous postings to InvestorsHub, an internet  
4 forum for discussion of stock trades, remaining shareholders of Integrated Health  
5 were cashed out at a price of \$0.203 per share in May of 2014—the price at which  
6 Dr. Chaudhuri had previously disclosed he would acquire 100% of the outstanding  
7 stock of Integrated Health.

8 66. Dr. Chaudhuri acquired all the outstanding stock of Integrated Health  
9 through these transactions.

10 **SPCP Liquidates Its Warrants through the Same Transaction by which**  
11 **Sells the Company to the ESOP at an Inflated Price**

12 67. Between 2013 and 2015, Integrated Health experienced financial  
13 distress. Repeated rounds of layoffs and rehiring had long been characteristic of  
14 Integrated Health’s employment practices. As a result of the financial difficulties  
15 and related layoffs, employees such as Plaintiff Gamino believed that their  
16 employment was increasingly precarious and were never sure if they would be  
17 employed the next day.

18 68. According to the Articles of Incorporation obtained from the State of  
19 California Secretary of State, KPC was incorporated on July 24, 2015.

20 69. According to an article published in the Press Enterprise on June 11,  
21 2015, KPC was a new name for Integrated Health, which Kali Pradip Chaudhuri  
22 had taken private in 2014.

23 70. According to an article published in the Orange County Business  
24 Journal on March 13, 2017, entitled “KPC Healthcare Bets on ESOP,” KPC was  
25 owned by Kali Pradip Chaudhuri prior to the 2015 ESOP Transaction. In that  
26 article, Dr. Chaudhuri is quoted as stating that “*I give my shares to [employees] but*  
27 *if they stay for five years [or more], it’s a win for us.*” (emphasis added; brackets in  
28

1 original). By this statement, Dr. Chaudhuri acknowledged that he sold his shares to  
2 the ESOP.

3 71. According to the 2015 Form 5500 filed with the Department of Labor  
4 on June 15, 2017, KPC Healthcare adopted the ESOP effective April 1, 2015.

5 72. On August 28, 2015, Alerus, acting as Trustee of the ESOP, caused  
6 the ESOP to purchase 100% of the shares of KPC common stock.

7 73. Based on allegations recited in docket entry no. 211 in *Gamino v.*  
8 *KPC Healthcare Holdings, Inc.*, and on the Analysis of Transaction Fairness filed  
9 by the KPC Defendants at docket entry no. 206-2 in *Gamino v. KPC Healthcare*  
10 *Holdings, Inc.*, on April 13, 2010, as part of the 2015 ESOP Transaction Defendant  
11 SPCP Group sold its common stock warrant entitling the holder to acquire  
12 79,182,635 shares of common stock of KPC to KPC on August 27, 2015, in  
13 exchange for: (a) \$18,810,000 in cash; (b) a promissory note in the original  
14 principal amount of \$26,946,000; (c) a warrant to purchase 762,592 shares of KPC  
15 at an exercise price of \$2.50 per share; and (d) 10.2% of any net payments received  
16 by KPC or its subsidiaries under California's hospital quality assurance fee (QAF)  
17 program based on services provided from January 1, 2017, to December 31, 2024.

18 74. Based on the Analysis of Transaction Fairness filed by the KPC  
19 Defendants at docket entry no. 206-2 in *Gamino v. KPC Healthcare Holdings, Inc.*,  
20 the Trustee's valuation advisor viewed the "simultaneous transactions" of the  
21 ESOP stock purchase and redemption of warrant holders as interrelated, referring to  
22 them repeatedly as "the Transaction," and evaluating the fairness of "the  
23 Transaction" to the ESOP from a financial point of view "taken as a whole."  
24 Among other components of the Transaction, the Analysis of Transaction Fairness  
25 described the entry into an Investor Rights Agreement among the Trust, the Seller,  
26 the Redeemed Warrant holders (defined to include SPCP) and KPC Healthcare, Inc.

1           75. To finance the purchase, the Plan entered into a \$207,574,000 term  
2 loan agreement with KPC. The remaining \$10,000,000 was paid by a contribution  
3 of cash from KPC to the Plan.

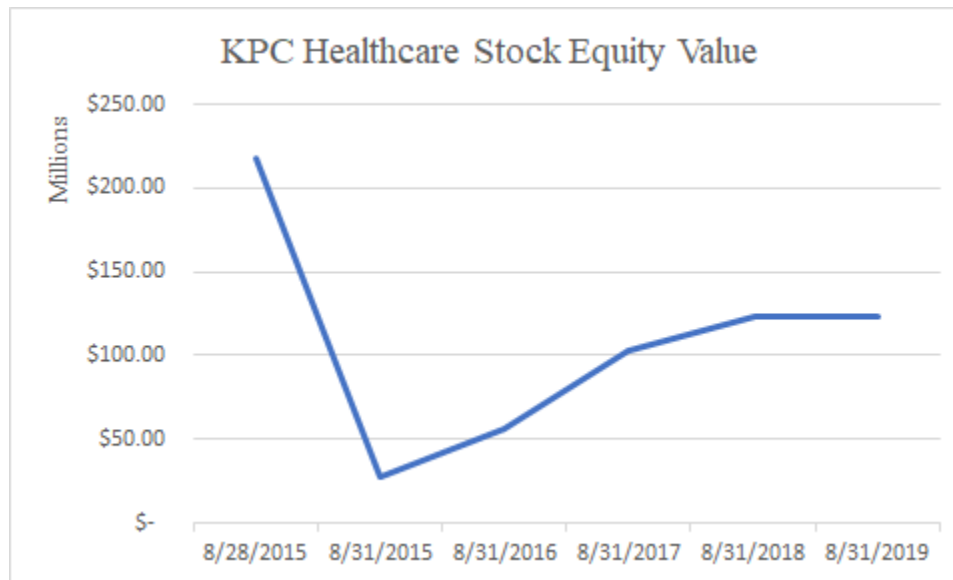
4           76. This purchase price for the KPC stock component of the 2015 ESOP  
5 Transaction represented a more than 419% increase over the equity value implied  
6 by Kali Pradip Chaudhuri's 2013 proposed and presumed price to acquire the  
7 company's stock when it was known as Integrated Health.

8           77. This purchase price for the KPC stock component of the 2015 ESOP  
9 Transaction also represented an increase of between 774% and 2,133% from the  
10 equity value implied by the prices at which Integrated Health traded on the public  
11 market between April 2012 and March 2013.

12           78. This purportedly spectacular rise in KPC's equity value is belied by  
13 KPC's operating results. In a June 16, 2018 interview with KPC's then-CEO  
14 Suzanne Richards, in *Modern Healthcare*, Ms. Richards candidly admitted that  
15 approximately three years before KPC was losing money: "When I came in, the  
16 facilities were not even close to making budget, and when you can't make budget  
17 you can't have a profit." She further acknowledged that her tenure had been  
18 marked by "reductions in force." Indeed, the introductory section of the interview  
19 explained that when Ms. Richards started at KPC, the four hospitals that KPC then  
20 owned "were losing \$2.5 million a month." A June 19, 2015 article in the *Orange*  
21 *County Business Journal*, "KPC Health Names Richards CEO of Health  
22 Operations," reported that she was named to that position as of June 2015 and had  
23 served as interim CEO since October 2014.

24           79. On information and belief, Defendant SPCP was aware of Integrated  
25 Health's poor operating results during this timeframe, including by virtue of its  
26 continued financial interest in KPC through the debt, warrants, and QAF rights it  
27 acquired in KPC through the 2015 ESOP Transaction and related contractual  
28 rights.

1           80. As shown by the chart below, the reported equity value of the ESOP's  
2 KPC stock declined precipitously following the 2015 ESOP Transaction and has  
3 remained far below the purchase price:



14           81. As explained by the Form 5500s filed with the Department of Labor,  
15 the funds borrowed by the ESOP to finance the purchase of KPC are  
16 “collateralized by the *unallocated* shares of stock and guaranteed by the  
17 Company.” But “[t]he lenders have no rights against shares once they are  
18 allocated under the ESOP.” As explained by the Form 5500, the financial  
19 statements present separately the assets and liabilities of the stock allocated to the  
20 accounts of participants from the assets and liabilities of the unallocated shares. As  
21 the acquisition indebtedness is only a liability of the *unallocated* shares, the  
22 acquisition debt cannot explain the post-acquisition depressed price of the  
23 *allocated shares*.

24           82. According to the 2015 Form 5500 filed with the Department of Labor  
25 on June 15, 2017, the purported fair market value for the KPC stock held by the  
26 ESOP was \$27,600,000 as of August 31, 2015.



1           83. According to the 2015 Form 5500 filed with the Department of Labor  
2 on June 15, 2017, the purported fair market value for the KPC stock held by the  
3 ESOP was \$56,000,000 as of August 31, 2016.

4           84. According to the 2016 Form 5500 filed with the Department of Labor  
5 on February 19, 2019, the purported fair market value for the KPC stock held by  
6 the ESOP was \$103,000,000 as of August 31, 2017.

7           85. According to the 2017 Form 5500 filed with the Department of Labor  
8 on February 4, 2019, the purported fair market value for the KPC stock held by the  
9 ESOP was \$123,000,000 as of August 31, 2018.

10           86. According to the 2018 Form 5500 filed with the Department of Labor  
11 on July 9, 2020, the purported fair market value for the KPC stock held by the  
12 ESOP was \$123,500,000 as of August 31, 2019.

13           87. The ESOP paid more than fair market value for KPC stock in the  
14 2015 ESOP Transaction. Based on the information available prior to filing this  
15 lawsuit, the purchase price for the 2015 ESOP Transaction was based in part on a  
16 valuation report that was unreliable and either did not take into account or failed to  
17 properly take into account the fact that less than two years before the transaction  
18 the selling shareholder had valued the Company at less than a quarter of the sale  
19 price and that during the intervening period the Company had experienced  
20 substantial financial distress, instability, layoffs, and persistent inability to make  
21 budgets.

22           88. A prudent fiduciary who had conducted a prudent investigation would  
23 have concluded that the ESOP was paying more than fair market value for the KPC  
24 shares and/or the debt incurred in connection with the Transaction was excessive.  
25 Kali Pradip Chaudhuri's proposal to acquire the Company's predecessor in late  
26 2013 was a matter of public record and was known or ought to have been known to  
27 the fiduciaries of the Plan.  
28

1           89. Based on documents filed with the Securities and Exchange  
2 Commission, Defendant SPCP Group had been an investor in Integrated Health  
3 since at least 2010 and it or its affiliates participated in the 2014 transaction by  
4 which Dr. Chaudhuri took Integrated Healthcare private. As a result, Defendant  
5 SPCP Group was aware that Dr. Chaudhuri was the chairman and CEO of KPC  
6 and would have had access to the financial information upon which the valuation  
7 of the 2015 ESOP Transaction was based.

8           90. Based on allegations recited in docket entry no. 211 in *Gamino v.*  
9 *KPC Healthcare Holdings, Inc.*, email correspondence between William Thomas,  
10 employees of Eureka Capital (KPC's financial advisor for the 2015 ESOP  
11 Transaction), and Thomas Banks (a Managing Director with Defendant SPCP)  
12 indicates that SPCP Group was provided with information regarding the aggregate  
13 transaction value and the consideration paid to Defendant Kali Pradip Chaudhuri in  
14 connection with the 2015 ESOP Transaction. Defendant SPCP Group thus knew  
15 that the purchase price for KPC stock in the 2015 ESOP Transaction was  
16 dramatically in excess of the equity value implied by Dr. Chaudhuri's 2014  
17 purchase of 100% of the outstanding stock of Integrated Health.

18           91. Based on allegations recited in docket entry no. 211 in *Gamino v.*  
19 *KPC Healthcare Holdings, Inc.*, the Warrant Purchase Agreement entered into by  
20 Defendant SPCP Group in connection with the 2015 ESOP Transaction indicates  
21 that SPCP Group knew both that the 2015 ESOP Transaction involved the sale of  
22 100% of the stock of KPC to an employee stock ownership plan and that Alerus  
23 was acting on behalf of the Plan in the 2015 ESOP Transaction in its capacity as  
24 trustee.

25           92. Based on allegations recited in docket entry no. 211 in *Gamino v.*  
26 *KPC Healthcare Holdings, Inc.*, Defendant SPCP Group participated in the  
27 negotiations leading up to the 2015 ESOP Transaction, and reviewed and  
28 commented on the terms of draft agreements and transaction terms.

1           93. Even after the 2015 ESOP Transaction closed, the decline in value of  
2 the KPC stock owned by the ESOP following the 2015 ESOP Transaction should  
3 have caused Alerus as well as the ESOP Committee (which consisted of all of the  
4 Director Defendants), at a minimum, to investigate whether the ESOP had paid  
5 more than fair market value in the 2015 ESOP Transaction. To the extent that any  
6 of the fiduciaries had conducted such an investigation, that investigation as well as  
7 any corrective measures would have been reported in one of the Form 5500s filed  
8 with the Department of Labor. As none of the Form 5500s report any such  
9 investigation or corrective actions, none of the fiduciaries investigated whether  
10 fiduciary violations had occurred in the 2015 ESOP Transaction despite red flags  
11 that should have raised concerns.

12                   **Dr. Kali Pradip Chaudhuri Continues to Use the Employee Owned**  
13                   **Company to Benefit Insiders**

14           94. Despite his sale of the Company to the ESOP in 2015, Defendant Dr.  
15 Kali Pradip Chaudhuri continues to exercise operational control over KPC both  
16 directly and through a group of personally loyal family members and insiders he  
17 has installed as officers and directors of the Company. According to an information  
18 statement filed with the California Secretary of State on March 7, 2019, Dr.  
19 Chaudhuri is the CEO of KPC as well as the Chairman of the Board.

20           95. According to an information statement filed with the California  
21 Secretary of State on March 7, 2019, William E. Thomas is the secretary of and a  
22 member of the Board of Directors of KPC. According to a News Release by  
23 University of California Riverside dated June 8, 2018, Mr. Thomas is the  
24 Executive Vice-President and General Counsel of the KPC Group of Companies.  
25 According to information from the California Bar website directory of lawyers,  
26 Mr. Thomas lists his business address as the headquarters for KPC Group. Even  
27 before joining KPC Group, Mr. Thomas was Dr. Chaudhuri's attorney.  
28

1           96. According to an information statement filed with the California  
2 Secretary of State on March 7, 2019, Kali Priyo Chaudhuri is the chief financial  
3 officer and a director of the Company. Kali Priyo Chaudhuri is Defendant Kali  
4 Pradip Chaudhuri's son.

5           97. Together, Kali Pradip Chaudhuri, his lawyer, and his son constitute a  
6 majority bloc of the five-person board of directors of KPC.

7           98. According to a press release issued by "KPC Health" on December 4,  
8 2018, on that date Dr. Sumanta Chaudhuri was appointed the Chief Medical  
9 Officer for Hemet Valley Medical Center and Menifee Valley Medical Center, two  
10 of the hospitals affiliated with KPC. According to a video posted to YouTube by  
11 Kali Pradip Chaudhuri on January 8, 2018, Dr. Sumanta Chaudhuri is Dr.  
12 Chaudhuri's daughter.

13           99. According to an undated press release issued by "KPC Health," KPC  
14 is a "subsidiary" of KPC Group. KPC Group is Kali Pradip Chaudhuri's \$10  
15 billion conglomerate with interests in real state, pharmaceuticals, and engineering  
16 as well as healthcare. Upon information and belief, KPC is simply treated as one of  
17 the group of companies that KPC Group owns.

## 18           **Relevant Provisions of the Plan Document**

### 19           *Definitions*

20           100. Article I of the Plan Document defines the following terms as follows:

21           a.       **ESOP Committee:** "ESOP Committee" means the KPC  
22 Healthcare Holdings, Inc. Employee Stock Ownership Plan Committee,  
23 which members are appointed by the Board, as from time to time  
24 constituted.

25           b.       **Fiduciary:** "Fiduciary" means any person who: (a) exercises  
26 any discretionary authority or discretionary control and management of this  
27 Plan or exercises any authority or control and management or disposition of  
28 Plan assets; (b) renders investment advice for a fee or other compensation,

1 direct or indirect, with respect to any monies or other property of the Trust  
2 or has any authority or responsibility to do so; or (c) has any discretionary  
3 authority or discretionary responsibility in the management of this Plan and  
4 the Trust, including, but not limited to, the Trustee, the ESOP Committee,  
5 and any person designated under ERISA Section 405(c)(1)(B).

6 c. **Plan Administrator:** “Plan Administrator” is the ESOP  
7 Committee unless the Company designates another person or persons to hold  
8 the position of Plan Administrator. In addition to its other duties, the Plan  
9 Administrator has full responsibility for compliance with the reporting and  
10 disclosure rules under ERISA.

11 d. **Trust:** “Trust” means the KPC Healthcare, Inc. Stock  
12 Ownership Trust which is and becomes a part of this Plan.

13 e. **Trustee:** “Trustee” means the trustee or trustees acting at the  
14 time in question under the Trust, and its or his or her or their successor(s) as  
15 such.

16 101. Section 11.15 of the Plan Document provides that the “Named  
17 Fiduciaries” of this Plan are (1) the Trustee, (2) the ESOP Committee, (3) the  
18 Appeal Committee (if appointed), and (4) any Investment Manager appointed  
19 hereunder.

20 *The ESOP Committee*

21 102. Section 9.1 of the Plan Document provides that “the Company [i.e.  
22 KPC] may appoint an ESOP Committee to administer the Plan. In the absence of  
23 an ESOP Committee, the Board of Directors assumes the powers, duties and  
24 responsibilities of the ESOP Committee.”

25 103. Section 9.3 of the Plan Document provides that “the ESOP Committee  
26 is empowered to assist the Trustee to satisfy and operate this Plan in accordance  
27 with the terms of this Plan, the Trust, the Code, and ERISA.”  
28

1           104. Section 9.4 of the Plan Document provides that the ESOP Committee  
2 has full discretion and authority to perform the following powers and duties,  
3 among others:

- 4           a. To engage the service of agents whom it may deem advisable to  
5 assist it with the performance of its duties.
- 6           b. To engage the services of an Investment Manager or Managers  
7 (as defined in ERISA Section 3(38) each of whom will have  
8 full power and authority to manage, acquire or dispose (or  
9 direct the Trustee with respect to acquisition or disposition) of  
10 any Plan asset under its control.
- 11           c. To construe and interpret this Plan and the rules and regulations  
12 adopted and to answer all questions arising in the  
13 administration interpretation and application of this Plan  
14 document and documents related to this Plan’s operation.
- 15           d. To establish procedures, correct any defect, and resolve any  
16 inconsistency in such manner and to such extent as shall be  
17 necessary or advisable to carry out the purpose of this Plan.

18           105. Section 9.6 of the Plan Document provides that “the decision of a  
19 majority of the members of the ESOP Committee appointed and qualified  
20 controls.”

21           *Trustee*

22           106. Section 11.15 of the Plan Document provides that “[t]he ESOP  
23 Committee shall have the sole responsibility for the administration of this Plan.”

24           107. Section 11.15 of the Plan Document provides that the Trustee shall  
25 have the sole responsibility to, among other things, “determine that the purchase  
26 price paid to purchase Qualifying Employer Securities does not violate the  
27 prohibited transaction rules....”  
28





1 officer or director or a 10 percent or more shareholder of an employer covered by  
2 the Plan.

3 114. At least as a result of being a fiduciary of the ESOP, and as a result of  
4 being an officer of and director of KPC, Dr. Kali Pradip Chaudhuri qualified as a  
5 party in interest within the meaning of ERISA § 3(14).

6 115. ERISA § 408(e), 29 U.S.C. § 1108(e) provides a conditional  
7 exemption from the prohibited transaction rules for sale of employer securities to  
8 or from a plan if a sale is made for adequate consideration. The burden is on the  
9 fiduciary and the parties-in-interest to demonstrate that conditions for the  
10 exemption are met.

11 116. ERISA § 3(18)(B) defines adequate consideration as “the fair market  
12 of the asset as determined in good faith by the trustee or named fiduciary.” ERISA  
13 § 3(18)(B) requires that the fiduciary or party-in-interest show that the price paid  
14 must reflect the fair market value of the asset at the time of the transaction, and the  
15 fiduciary conducted a prudent investigation to determine the fair market value of  
16 the asset.

17 117. As Trustee, Alerus caused the Plan to engage in a prohibited  
18 transaction in violation of ERISA §§ 406(a)(1)(A) and (D), 29 U.S.C. §§  
19 1106(a)(1)(A) and (D), by failing to ensure that the ESOP paid no more than fair  
20 market value for KPC stock purchased in the 2015 ESOP Transaction. Specifically,  
21 the ESOP paid more than fair market value for shares sold by Kali Pradip  
22 Chaudhuri.

### 23 **Underlying Violation of ERISA § 406(b)**

24 118. ERISA § 406(b), 29 U.S.C. § 1106(b), mandates that a plan fiduciary  
25 shall not (1) “act in any transaction involving the plan on behalf of a party (or  
26 represent a party) whose interests are adverse to the interests of the plan or the  
27 interests of its participants,” or (2) “deal with the assets of the plan in his own  
28 interest or for his own account,” or (3) “receive any consideration for his own

1 personal account from any party dealing with such plan in connection with a  
2 transaction involving the assets of the plan.”

3 119. As chairman of the Board of Directors of KPC and in turn a member  
4 of the ESOP Committee, Kali Pradip Chaudhuri was a fiduciary of the ESOP at the  
5 time of the 2015 ESOP Transaction.

6 120. By selling his shares of KPC stock to the Plan in the 2015 ESOP  
7 Transaction, Dr. Chaudhuri acted in a transaction involving a plan where his own  
8 interests were adverse to those of the ESOP within the meaning of ERISA §  
9 406(b)(1), he dealt with the assets of the Plan, which purchased his KPC stock, in  
10 his own interest within the meaning of ERISA § 406(b)(2), and as a result of the  
11 receipt of the proceeds from the sale of his KPC stock received consideration for  
12 his own personal account in connection with a transaction involving assets of a  
13 plan within the meaning of ERISA § 406(b)(3).

#### 14 **Underlying Breaches of Fiduciary Duties**

15 121. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires that a plan  
16 fiduciary discharge his or her duties with respect to a plan solely in the interest of  
17 the participants and beneficiaries, (A) for the exclusive purpose of providing  
18 benefits to participants and the beneficiaries of the plan, (B) with the care, skill,  
19 prudence, and diligence under the circumstances then prevailing that a prudent  
20 person acting in a like capacity and familiar with such matters would use in the  
21 conduct of an enterprise of a like character and with like aims.

22 122. In the context of a transaction involving the assets of the Plan, the  
23 duties of loyalty under ERISA § 404(a)(1)(A) and prudence under ERISA §  
24 404(a)(1)(B) require a fiduciary to undertake an appropriate investigation to  
25 determine that the plan and its participants receive adequate consideration for the  
26 plan’s assets and the participants’ account in the plan.

27 123. Pursuant to ERISA § 3(18), adequate consideration for an asset for  
28 which there is no generally recognized market means the fair market value of the

1 asset determined in good faith by the trustee or named fiduciary pursuant to the  
2 terms of the plan and in accordance with the Department of Labor regulations.

3 124. To fulfill its fiduciary duties, Alerus was required to undertake an  
4 appropriate and independent investigation of the fair market value of KPC stock in  
5 the 2015 ESOP Transaction in order to fulfill its fiduciary duties. Among other  
6 things, Alerus was required to conduct a thorough and independent review of any  
7 “independent appraisal,” to make certain that reliance on any and all valuation  
8 experts’ advice was reasonably justified under the circumstances of the 2015 ESOP  
9 Transaction; to make an honest, objective effort to read and understand the  
10 valuation reports and opinions and question the methods and assumptions that did  
11 not make sense.

12 125. An appropriate investigation would have revealed that the valuations  
13 used for and the price paid by the ESOP in the 2015 ESOP Transaction did not  
14 reflect the fair market value of the KPC stock purchased by the Plan, the 2015  
15 ESOP Transaction was not in the best interests of the Plan participants and the  
16 2015 ESOP Transaction would cause the ESOP to take on excessive debt.  
17 Additionally, Alerus was required to remedy the ESOP’s overpayment for KPC  
18 stock after the date of the 2015 ESOP Transaction, including as necessary  
19 correcting the prohibited transaction by seeking the overpayment from Kali Pradip  
20 Chaudhuri and/or the breaching Trustee.

21 **Knowing Participation by Defendant SPCP Group in Prohibited**  
22 **Transactions and Fiduciary Breaches**

23 126. According to Defendant SPCP Group’s Amended Schedule 13-D filed  
24 on September 12, 2013 with the Securities and Exchange Commission, Defendant  
25 SPCP Group was aware of the details of the 2014 transaction by which Dr.  
26 Chaudhuri took Integrated Healthcare private. The Amended Schedule 13-D stated  
27 that Defendant SPCP Group agreed to provide Kali Pradip Chaudhuri a term loan  
28 for the purpose of acquiring 100,110,430 shares of common stock of Integrated

1 Health. According to the same filing, Dr. Chaudhuri planned a second step, “short-  
2 form” merger through which he would acquire 100% of the outstanding shares of  
3 Integrated Health at \$0.203 per share. The Amended Schedule 13-D also stated  
4 that, in connection with the 2014 transaction in which Dr. Chaudhuri took  
5 Integrated Healthcare private, Defendant SPCP Group and its members, Edward A.  
6 Mulé, and Robert J. O’Shea, would enter into an agreement with the “Chaudhuri  
7 Shareholders” (including Dr. Chaudhuri) concerning their rights and obligations as  
8 to the governance of Integrated Health and limitations and other provisions  
9 governing the disposition of shares of Integrated Health owned by SPCP Group.

10       127. According to the Amended Schedule 13-D, SPCP Group held sole  
11 voting power, and Edward A. Mulé and Robert J. O’Shea held shared voting  
12 power, over the warrants to 96,000,000 shares of common stock of Integrated  
13 Health. According to the Amended Schedule 13-D, SPCP Group, Mulé, and  
14 O’Shea, together with “the Chaudhuri shareholders” (including Dr. Chaudhuri),  
15 “would exercise their existing warrants to acquire, in cashless exercises, additional  
16 shares of Common Stock” so that SPCP Group, Mulé, and O’Shea and their  
17 undisclosed “affiliates . . . would collectively own 25% of the issued and  
18 outstanding capital stock of [Integrated Healthcare] and the Chaudhuri  
19 Shareholders would beneficially own the remainder of the capital stock of  
20 [Integrated Healthcare].”

21       128. Based on their involvement in planning the 2014 transaction with Dr.  
22 Chaudhuri as described in their 2013 disclosures to the SEC, SPCP Group, Mulé,  
23 and O’Shea knew that Dr. Chaudhuri planned and organized the 2014 transaction  
24 to result in his acquisition of all of the outstanding shares of Integrated Health. On  
25 information and belief, as investors in KPC, SPCP Group, Mulé, and O’Shea were  
26 aware of publicly available information that remaining shareholders of Integrated  
27 Health were paid \$0.203 per share for their shares in the 2014 transaction—the  
28 price SPCP Group, Mulé, and O’Shea had agreed upon with Dr. Chaudhuri, as

1 recited in their 2013 disclosures to the SEC. According to SPCP Group's Amended  
2 Schedule 13-D filed in 2014, SPCP Group, Mulé, and O'Shea did not end their  
3 involvement in planning and arranging for the 2014 transaction until February  
4 2014 – one month after Integrated Health terminated the registration of its  
5 securities with the SEC.

6 129. KPC purchased 100% of the common stock warrants owned by SPCP  
7 Group, Mulé, and O'Shea as part of the 2015 Transaction at the purchase price of  
8 KPC common stock. Based on their involvement in planning for and arranging the  
9 2014 transaction as recited in their disclosures to the SEC, and as investors in  
10 KPC, SPCP Group, Mulé, and O'Shea knew that Dr. Chaudhuri was the chairman  
11 and CEO of KPC and that Dr. Chaudhuri would receive payment for his shares of  
12 common stock from KPC at the purchase price of the KPC stock component of the  
13 2015 Transaction.

14 130. Based on their involvement in planning for and arranging the 2014  
15 transaction, SPCP, Mulé, and O'Shea knew that the purchase price for the KPC  
16 stock component of the 2015 ESOP Transaction represented a more than 419%  
17 increase over the equity value implied by the price that Dr. Chaudhuri paid to  
18 acquire shares of KPC stock in the 2014 transaction. Based on their involvement in  
19 planning for and arranging the 2014 transaction, and as investors in KPC, SPCP,  
20 Mulé, and O'Shea knew that the purchase price for the KPC stock component of  
21 the 2015 ESOP Transaction represented an increase of between 774% and 2,133%  
22 from the equity value implied by the prices at which Integrated Health traded on  
23 the public market between April 2012 and March 2013. As investors in KPC,  
24 SPCP, Mulé, and O'Shea were also aware of KPC's performance as of 2015, as  
25 described in publicly reported comments by its CEO of Health Operations.

26 131. Based on the Analysis of Transaction Fairness filed by the KPC  
27 Defendants at docket entry no. 206-2 in *Gamino v. KPC Healthcare Holdings, Inc.*,  
28 Defendant SPCP Group participated in the 2015 ESOP Transaction, including by

1 entering into a Warrant Purchase Agreement between the Company and SPCP  
2 Group, LLC, dated August 28, 2015 and an Investor Rights Agreement between  
3 the Trust, the Seller, the Redeemed Warrantholders, and KPC Healthcare, Inc.,  
4 dated August 28, 2015.

5 132. Based on the foregoing, Defendant SPCP Group was aware of facts  
6 sufficient to establish and either knew or should have known that the 2015 ESOP  
7 Transaction constituted a prohibited transaction with Dr. Chaudhuri, a Plan  
8 fiduciary and party-in-interest. As a knowing participant in the 2015 ESOP  
9 Transaction, Defendant SPCP Group is subject to appropriate equitable relief for  
10 its knowing participation in the violations of ERISA § 406(a) & (b), 29 U.S.C. §  
11 1106(a) & (b),

12 133. Based on the foregoing, Defendant SPCP Group was aware of facts  
13 sufficient to establish and either knew or should have known that Alerus causing  
14 the ESOP to engage in the 2015 ESOP Transaction constituted a breach of  
15 fiduciary duty. As a knowing participant in the 2015 ESOP Transaction, Defendant  
16 SPCP Group is subject to appropriate equitable relief for the violations of ERISA §  
17 404(a)(1), 29 U.S.C. § 1104(a)(1).

### 18 ENTITLEMENT TO RELIEF

19 134. By virtue of the violations set forth in the foregoing paragraphs,  
20 Plaintiff and the Class are entitled pursuant to ERISA § 502(a)(3), 29 U.S.C. §  
21 1132(a)(3), to sue Defendant SPCP Group for any appropriate equitable relief to  
22 redress the wrongs described above.

### 23 PRAYER FOR RELIEF

24 Wherefore, Plaintiff on behalf of herself and the Class, pray that judgment  
25 be entered against Defendant on each claim and be awarded the following relief:

26 A. Declare that Defendant has knowingly participated in breaches of  
27 fiduciary duties under ERISA;

1           B.     Declare that Defendant has knowingly participated in prohibited  
2 transactions by Alerus and Kali Pradip Chaudhuri in violation of ERISA §§  
3 406(a)-(b), 29 U.S.C. §§ 1106(a)-(b), with respect to the 2015 ESOP Transaction;

4           C.     Order that Defendant provide other appropriate equitable relief to the  
5 ESOP, including but not limited to, by providing an accounting for profits,  
6 imposing a constructive trust and/or equitable lien on any funds wrongfully held by  
7 Defendant;

8           D.     Require Defendant to pay attorneys' fees and costs pursuant to ERISA  
9 § 502(g), 29 U.S.C. § 1132(g), and/or order payment of fees and expenses to  
10 Plaintiff's counsel on the basis of the common benefit or common fund doctrine  
11 out of any money recovered for the Class;

12           E.     Award pre-judgment interest and post-judgment interest; and

13           F.     Award such other and further relief that the Court determines that  
14 Plaintiff and the Class are entitled to pursuant to ERISA § 502(a), 29 U.S.C. §  
15 1132(a) or pursuant to Rule 54(c) of the Federal Rules of Civil Procedure or that is  
16 equitable and just.



1 Dated: November 22, 2021

Respectfully submitted,

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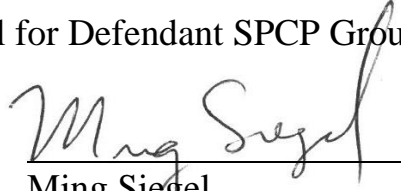
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27 *Attorneys for Plaintiff*  
28

1 **Certificate of Service**

2 I certify that on November 22, 2021, I served the foregoing Amended Class  
3 Action Complaint by first class mail on Theodore M. Becker, 444 West Law St.,  
4 Ste. 400, Chicago, IL 60606, counsel for Defendant SPCP Group, LLC.

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