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STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

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IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

MECKLENBURG COUNTY, N.C.

Case No.: 18 CVS 9588

Richard Topping,

Plaintiff,

v.

Cardinal Innovations Healthcare
Solutions, Wallace "Chuck" Hollowell,
Stephen Martin, Carmen Hooker Odom,
and Other Unknown Cardinal Employees
and Board Members,

Defendants.

COMPLAINT
(Jury Trial Demanded)

Plaintiff Richard Topping, through undersigned counsel, complains of Defendants Cardinal Innovations Healthcare Solutions (hereinafter "Cardinal") Wallace ("Chuck") Hollowell, Stephen Martin, Carmen Hooker Odom, and Other Unknown Cardinal Employees and Board Members, as follows:

Introduction

1. At 9:00 a.m. on the morning of March 26, 2018, Cardinal Innovations Healthcare Solutions ("Cardinal") filed a lawsuit alleging that Richard Topping had engaged in misconduct while serving as the Chief Executive Officer ("CEO") of Cardinal.
2. Upon information and belief, Chuck Hollowell, as the General Counsel of Cardinal, and Stephen Martin, as the Deputy General Counsel of Cardinal, were intimately involved in the drafting and filing of that lawsuit.
3. Upon information and belief, Hollowell and Martin's motive for drafting and filing the lawsuit was to make Richard Topping the scapegoat for *their* own conduct in (a)

approving Topping's Employment Agreement, which was drafted by Hollowell's former law firm partner and contained a "change of control" provision requiring the payment of two years of severance under certain circumstances, (b) drafting the Employment Agreements of other Cardinal executives (including Hollowell himself), which also contained "change of control" provisions requiring the payment of two years of severance under certain circumstances, and (c) drafting the Severance Agreements entered into with Topping and three other Cardinal employees in November 2017 – all of which had been severely criticized in a Department of Health and Human Services Audit report and in numerous news stories in the media.

4. Upon information and belief, part of Hollowell's and Martin's strategy in the litigation was to schedule a press conference for members of the news media minutes after the filing of the lawsuit, in order to generate negative press coverage of Richard Topping and thereby prejudice Topping and his defense of the lawsuit.

5. Upon information and belief, Carmen Hooker Odom, as the acting Chair of the Cardinal Board of Directors, and a majority of the Cardinal Board, approved this litigation strategy.

6. Pursuant to defendants' plan, at 9:00 a.m. on the morning of March 26, 2018, Cardinal filed its lawsuit against Richard Topping, alleging it was entitled to the return of all severance funds paid to Topping based upon the allegation he had engaged in misconduct as the CEO.

7. Also pursuant to the defendants' plan, Cardinal held a press conference to discuss Richard Topping's conduct as CEO at 10:30 a.m. on the morning of March 26, 2018.

8. At the press conference, Kurt Meyers, a lawyer hired to conduct an internal investigation of Topping, provided the media with a PowerPoint presentation that contained materially misleading and false derogatory statements about Richard Topping.

9. Upon information and belief, defendants (including attorneys Hollowell and Martin) knew in advance that the PowerPoint slides Meyers planned to show to the media contained derogatory statements concerning Richard Topping.

10. Upon information and belief, defendants (including attorneys Hollowell and Martin) knew in advance that the derogatory allegations in the PowerPoint presentation Meyers planned to give were materially misleading and false.

11. Defendants (including attorneys Hollowell and Martin) knew that the materially misleading and false derogatory statements about Richard Topping in Meyers' PowerPoint presentation were similar to the materially misleading and false allegations in the Cardinal complaint Hollowell and Martin had helped to draft.

12. Upon information and belief, as part of their litigation strategy, Hollowell and Martin also decided to videotape the derogatory statements made by Meyers at the press conference so these statements could be posted on Cardinal's website after the press conference.

13. Upon information and belief, Hollowell and Martin's strategy of creating and posting a video was designed to further insure that Richard Topping's defense of the lawsuit filed by Cardinal would be prejudiced by adverse publicity.

14. Richard Topping's defense of the lawsuit filed by Cardinal was in fact prejudiced by the negative publicity generated as a result of Hollowell and Martin's unethical litigation strategy.

15. This is an action to hold defendants responsible for causing, procuring, promoting, authorizing and/or otherwise participating in the publication of false defamatory statements about Richard Topping and for posting these false defamatory statements on the Cardinal website.

Parties

16. Plaintiff Richard Topping is a resident of Mecklenburg County.

17. Defendant Wallace "Chuck" Hollowell is the General Counsel of Cardinal and a resident of Gaston County.

18. Defendant Stephen Martin is the Deputy General Counsel of Cardinal and a resident of Union County.

19. Defendant Carmen Hooker Odom is the Vice-Chair of the Cardinal Board of Directors, and a resident of Mecklenburg County. Upon information and belief, Bryan Thompson, the Chair of the Cardinal Board, recused himself from all discussions and decisions relating to Richard Topping, so Odom presided over all Board discussions and decisions relating to Topping.

20. Defendant Cardinal is an Area Authority established pursuant to G.S. 122C-115(c), operating as a Managed Care Organization ("MCO") and Prepaid Inpatient Health Plan pursuant to 42 C.F.R. 438.2, and has its headquarters in Mecklenburg County.

21. Defendants Other Unknown Cardinal Employees and Board Members cannot be specifically identified at this time, but will be added as individual defendants if and when identified during discovery.

Jury Trial Demand

22. Richard Topping hereby demands a trial by jury on all issues and claims.

Facts

A. Background

23. On November 27, 2017, the North Carolina Department of Health and Human Services (DHHS), without prior notice, took over the operations of Cardinal and subsequently installed a new Board of Directors to manage the organization.

24. DHHS's goal in taking over Cardinal was to obtain possession of the \$275 million in Medicaid savings that Cardinal had accumulated over the time that Richard Topping had been the CEO, so these funds could be used by the state for purposes unrelated to providing necessary services to Medicaid recipients.

25. This action by the state was in violation of the federal Medicaid statutes and rules, and Richard Topping had been vociferous in his opposition to this illegal use of the Medicaid savings by the state. See May 4, 2018 article, attached as Exhibit A, which is hereby incorporated by reference as if fully set forth herein.

26. On November 27th, Richard Topping, whose last day of work was scheduled to be December 1, 2017, was locked out of his personal office and his access to Cardinal's computer and IT system.

27. Trey Suttan, the Interim CFO of Cardinal, was made the Interim CEO by the new Cardinal Board.

28. During late November and December 2017, there was substantial adverse publicity about the terms of the Employment Agreements and Severance Agreements entered into with Richard Topping and other C-suite executives employed by Cardinal.

29. This adverse publicity was generated primarily by a 17-page DHHS audit report released in October 2017 that severely criticized the severance provisions in the

Employment Agreements entered into with Richard Topping and other Cardinal executives.

30. The severance provisions in Topping's Employment Agreement were originally contained in a draft employment agreement provided to Cardinal by Hollowell's former law firm partner, and had been approved by Hollowell and Martin, who had themselves drafted similar provisions in the Employment Agreements they prepared for a number of other Cardinal executives (including Hollowell himself).

31. Upon information and belief, sometime during December 2017, Chuck Hollowell and Stephen Martin, with the concurrence of Trey Suttan (the Interim CEO of Cardinal) and Bryan Thompson (the Chair of the new Cardinal Board of Directors), decided to make Richard Topping the scapegoat for the severance provisions Hollowell and Martin had drafted and approved, and for the November payments made to Richard Topping and three other executives in accordance with the severance provisions in their Employment Contracts.

32. Upon information and belief, in furtherance of their plan, Hollowell and Martin, with the concurrence of Suttan and Thompson, agreed to hire the law firm of McGuireWoods to conduct an investigation into Richard Topping's conduct relating to the drafting of the much-criticized severance provisions and the payment of Topping's and three other executives' severance.

B. Hollowell and Martin's Role in the Investigation of Topping

33. During the month of January 2018, Cardinal hired the law firm of McGuireWoods to conduct an "independent internal investigation" (the "investigation") into the conduct of Richard Topping as the CEO of Cardinal.

34. Upon information and belief, Kurt Meyers, a partner at McGuireWoods, was assigned to supervise that investigation.

35. Upon information and belief, during the months of February and March 2018, Hollowell and Martin met repeatedly with McGuireWoods attorneys and helped to “direct” the investigation of Topping’s conduct relating to the execution of the severance agreements and the approval of the severance payments made in November 2017.

36. More specifically, upon information and belief, Hollowell and Martin helped to direct the McGuireWoods legal team to certain documents and employees, presented their analysis of the events that took place to McGuireWoods attorneys, and on several occasions reviewed the allegations in a PowerPoint presentation that McGuireWoods was preparing to summarize the results of their investigation for the new Cardinal Board of Directors.

37. Hollowell and Martin had direct personal knowledge that the statements contained on a number of the PowerPoint slides prepared by McGuireWoods regarding Richard Topping were materially misleading and false.

38. Upon information and belief, Hollowell and Martin were also told by other employees of Cardinal that the statements contained on a number of the PowerPoint slides prepared by McGuireWoods regarding Richard Topping were materially misleading and false.

39. Despite this, Hollowell and Martin encouraged and directed McGuireWoods to include these statements in a PowerPoint presentation.

40. As a result of the investigation initiated and shaped by Hollowell and Martin, with the concurrence of Suttan and Thompson, Meyers prepared a PowerPoint

presentation alleging that Topping had engaged in misconduct prior to and in connection with the granting of the November 2017 severance by the previous Cardinal Board.

41. Upon information and belief, significant portions of Meyers' PowerPoint presentation were shaped by input from Hollowell and Martin, who provided false and misleading information and documents taken out of context to the McGuireWoods legal team.

42. Upon information and belief, Hollowell and Martin provided edits and feedback to Meyers regarding the proposed presentation but did not correct information that they knew to be materially misleading and false.

C. Hollowell and Martin's Role in the Lawsuit Filed Against Topping

43. Upon information and belief, by March 2018, Hollowell and Martin had decided that Cardinal should file a lawsuit attacking Topping for alleged misconduct and seeking to "claw-back" the severance payment made to him.

44. Upon information and belief, Hollowell and Martin drafted the initial complaint to be filed against Topping.

45. Upon information and belief, Hollowell and Martin's motive in drafting the complaint was to shift blame for the severance provisions they had drafted and approved, and which benefitted Hollowell personally, away from themselves and onto Richard Topping.

46. Upon information and belief, Hollowell and Martin intended to use the PowerPoint presentation prepared by McGuireWoods at a meeting of the new Cardinal Board of Directors, in order to help convince the new Cardinal Board to authorize filing the lawsuit against Richard Topping.

47. During a meeting of the new Cardinal Board of Directors on Friday, March 23, 2018, McGuireWoods, through Kurt Meyers, presented a PowerPoint report alleging that Topping had engaged in misconduct prior to and in connection with the granting of the November 2017 severance by the previous Cardinal Board.

48. The report provided to the Cardinal Board by McGuireWoods, through Kurt Meyers, contained materially misleading and false allegations regarding Richard Topping.

49. Upon information and belief, in order to insure the lawsuit against Richard Topping would be approved by the Board, Hollowell and Martin did not disclose to the Board that a former law firm partner of Hollowell's had drafted Topping's Employment Agreement, which contained a "change of control" provision that was alleged in the lawsuit to be an improper "daisy-chain" provision, that Hollowell himself had approved this provision in Topping's employment agreement, and that Hollowell had drafted the severance agreement for Topping that was at the center of the Cardinal lawsuit against Topping.

D. Carmen Hooker Odom's Role in the Lawsuit Filed Against Topping

50. Upon information and belief, Carmen Hooker Odom presided over the portions of the Board of Directors meeting held on Friday, March 23, 2018 during which Meyers presented the Board with the PowerPoint presentation regarding his investigation of Richard Topping's alleged misconduct as CEO.

51. Upon information and belief, at the March 23rd Board meeting over which Odom presided, Hollowell urged that a decision be made to immediately file the lawsuit he and Martin had drafted.

52. Upon information and belief, based on the materially misleading and/or false information presented to the Board by Meyers and Hollowell, Odom and other currently unknown members of the Board voted to approve the filing of the lawsuit against Richard Topping.

53. Upon information and belief, on or before March 23, 2018, Hollowell, Martin, Odom and other currently unknown Cardinal employees and Board Members decided that the lawsuit against Richard Topping should be filed as soon as the Mecklenburg County Superior Court Clerk's office opened at 9:00 am on Monday, March 26, 2018.

54. On Monday, March 26, 2018, as soon as the Clerk's office opened at 9:00 a.m., Cardinal filed its lawsuit against Richard Topping, alleging that he had engaged in misconduct as the CEO of Cardinal, and seeking the return of the severance paid to him based upon that alleged misconduct.

E. Hollowell, Martin and Odom's Role in the Cardinal Press Conference

55. Upon information and belief, on or before March 23, 2018, Hollowell, Martin, Odom and other currently unknown Cardinal employees and Board Members decided to schedule a press conference in conjunction with the filing of the lawsuit against Richard Topping, and to have Kurt Meyers provide to the assembled media the PowerPoint presentation he had made to the Board.

56. Upon information and belief, on or before March 23, 2018, Hollowell, Martin, Odom and other currently unknown Cardinal employees and Board Members decided to schedule the Cardinal press conference for 10:30 a.m. on the morning of March 26, 2018.

57. Upon information and belief, Odom and other currently unknown members of the Cardinal Board of Directors agreed to have Cardinal hold the press conference on

Monday, March 26th knowing that Meyers' PowerPoint presentation accused Richard Topping of criminal offenses and significant corporate misconduct that would impugn his integrity and reputation in the healthcare business world and generally.

58. Upon information and belief, on Friday, March 23, 2018, Ashley Conger, the Vice-President of Corporate Communications and Marketing, was directed to send out a press release announcing a press conference to be held on March 26, 2018 at 10:30 a.m.

59. The press release specifically mentioned that the press conference would include a presentation on the results of the investigation of Richard Topping conducted by McGuireWoods.

60. On March 23, 2018, Hollowell and Martin knew that the presentation to be given at the press conference on March 26, 2028 at 10:30 a.m. would allege that Richard Topping had engaged in the same misconduct as alleged in the complaint drafted by Hollowell and Martin to be filed at 9:00 a.m. on March 26, 2018.

61. Hollowell and Martin knew, or reasonably should have known, that the extrajudicial statements made at the press conference would prejudice Richard Topping and his ability to defend against the lawsuit filed by Cardinal.

62. The press conference started at approximately 10:30 a.m. on March 26, 2018, and was attended by various members of the media, including reporters from the Charlotte News & Observer, the Winston-Salem Journal, WFAE Radio, among others.

63. Odom attended the press conference and represented Cardinal as the Vice-Chair of the Cardinal Board.

64. Upon information and belief, Hollowell and Martin also attended the press conference.

65. During the press conference, Kurt Meyers made an hour-long PowerPoint presentation to the media.

66. Meyers' PowerPoint presentation alleged that Richard Topping had committed criminal offenses and engaged in significant misconduct and breaches of fiduciary duty while serving as the CEO of Cardinal. This was the same misconduct as was alleged in the lawsuit filed by Cardinal earlier that day.

67. As a result of the presentation made by Meyer to the Board the previous Friday, Hollowell, Martin and Odom all knew before the press conference began that the PowerPoint slides used by Meyers would contain defamatory statements about Richard Topping.

68. After Meyers finished his presentation, Odom, speaking for the Cardinal Board, endorsed his defamatory statements regarding Richard Topping. Specifically, Odom stated:

I serve as the vice chair of the new Board and **my comments are on behalf of all the new Members of the Board.** . . . the Board of Directors of Cardinal Innovations Healthcare fully supported this independent investigation into the details surrounding the termination of and the severance pay to the former CEO Richard Topping and any other material issues.

We did receive this report that you've heard today on March 23rd at our Board meeting and we authorized - because we believe that one of the ways to regain that trust is to be transparent and open - and so **the Board unanimously voted to share this report with the public.**

69. Upon information and belief, Hollowell and Martin caused and/or authorized the press conference to be videotaped and posted on Cardinal's public website so that Meyers' statements would further prejudice Mr. Topping's defense.

70. On April 21, 2018, plaintiff's counsel sent a letter to Cardinal, with a copy to Hollowell, demanding that the video be removed from Cardinal's website immediately.

71. Upon information and belief, Hollowell and Martin did not advise Cardinal to remove the video from its website.

72. The knowing and intentional conduct by Hollowell and Martin evidenced actual malice, ill-will and spite towards Richard Topping, and a reckless indifference to the right of Richard Topping to a fair trial.

Defamatory Written Statements Made at the March 26, 2018 Press Conference

73. During the press conference caused and authorized by the defendants, a number of PowerPoint slides were presented to the assembled news media.

74. The presentation included slides that specifically alleged:

- a. The "Theft of Information and Intellectual Property" by Richard Topping as the CEO of Cardinal (6 slides).
- b. A "Possible Motive for Theft" by Richard Topping as the CEO of Cardinal.
- c. "Self-Enrichment" by Richard Topping as the CEO of Cardinal (12 slides).
- d. That "Topping took steps to enrich himself at Cardinal's expense by employing three strategies:
 - i. Create a new venture to profit from Cardinal Innovations
 - ii. Inflate Salary without regard to reputational, regulatory or legal damage
 - iii. Maximize severance"
- e. That Topping provided "Misinformation to Board Members" (2 slides).

Defamatory Oral Statements Made at the March 26, 2018 Press Conference

75. During the course of the press conference a number of defamatory oral statements were also made.

76. The defamatory oral statements made during the press conference include, but are not limited to, the following:

- f. An allegation that on the afternoon of November 17, 2017, Richard Topping “stole” intellectual property and information from Cardinal by downloading material from his W drive.
- g. An allegation that Richard Topping’s motive for this “theft” was to launch “a new venture after he left . . . to profit from Cardinal Innovations,” and that this new venture would compete with Cardinal “in the same space.”
- h. Allegations that Richard Topping had engaged in a pattern of “self-enrichment” and that he “took steps to enrich himself” even beyond his alleged “new venture.” For example:
 - i. That during his years as the CEO of Cardinal, Richard Topping “took steps to inflate his salary.”
 - ii. That Topping had “insisted” that his employment agreement contain what he derisively called a “daisy-chain” provision (most commonly referred to by employment lawyers who routinely draft them as a “change of control” provision), and that he had intentionally included this provision in the employment agreements he entered into with his executive team “in order to strengthen his own control and to strengthen his arguments for benefiting from Cardinal.”
 - iii. That Richard Topping did this so that if he left Cardinal, “the other executives could leave too and get their own severance as a result of leaving,” and he would therefore be in a position to threaten the Board with a mass exodus of executives if the Board did not do what Topping wanted.
- i. That Richard Topping had manipulated the information provided to the Cardinal Board in November 2017 in order to get the Board to approve his two-year severance payment.
- j. That Richard Topping had “apparently” bribed the former Board chair to support his request for two years of severance by paying for her family trip to the beach in November 2017.

77. When a reporter asked whether the theft of proprietary documents from Cardinal was criminal, Odom replied:

“Just to answer from the Board’s perspective, that is why we often . . . engage independent counsel to look at the particular issue around severance separation payment and any other material findings”.

78. The written and oral statements set forth above, and others made during the press conference, were defamatory.

79. The written and oral statements set forth above, and others made during the press conference, were materially misleading and/or false.

The Republication of the Defamatory Statements by Cardinal

80. The defamatory statements made during the press conference were recorded on video.

81. Hollowell, Martin and Odom, along with other currently unknown Cardinal employees and Board Members, approved and authorized the subsequent posting of the video containing the defamatory statements on the Cardinal website.

82. The news media was informed before the press conference that “[a] recording of the press conference, including the [PowerPoint] presentation, will be available on Cardinal Innovations Healthcare’s website for 30 days following release.”

83. The video of the defamatory statements was posted on the Cardinal website immediately following the end of the press conference.

84. A primary purpose of posting the video was to further disseminate to the public the defamatory statements about Richard Topping made during the press conference.

85. On March 26, 2018, at 1:14 pm, a story about the lawsuit and Cardinal’s press conference was posted on the Charlotte Observer website. The story appeared in the print edition of the newspaper the next day.

86. The opening few paragraphs of the article in the Observer predictably tied the allegations made in the lawsuit and the allegations made at the press conference together:

“Cardinal Innovations Monday sued former CEO Richard Topping in an effort to recover the nearly \$1.7 million in severance he received last fall on the same day state officials took over the agency.

At the same time, a former federal prosecutor hired [sic] Cardinal said Topping “stole” proprietary information, destroyed agency data and engaged in “a pattern of self-enrichment . . . at the expense of Cardinal.”

87. The story went on to describe the Cardinal press conference as follows:

On Monday morning, Cardinal invited reporters for a nearly 90-minute presentation by attorney Kurt Meyers, a former assistant U.S. attorney. In a presentation, he laid out an extraordinarily detailed case against Topping using documents, emails and text messages gleaned from other sources. He sought to show how Topping repeatedly sought higher compensation.

* * * *

Through emails and documents found in Topping’s office, Meyers also described how he appeared to be planning a new business venture while still at Cardinal. **Topping, Meyers said, “contemplated how he was going to enrich himself from Cardinal.”**

88. The statements quoted in the Observer article were materially misleading.

89. The statements quoted in the Observer article were materially false.

90. On April 21, 2018, a letter was emailed to the CEO of Cardinal, with copies to Chuck Hollowell and Board Chair Bryan Thompson, setting forth the defamatory statements in the video and the facts establishing that the statements were materially misleading and false, and demanding that the video be removed from the website “as soon as humanly possible.” A copy of that letter is attached as Exhibit B and is hereby incorporated by reference as if fully set forth herein.

91. As of Tuesday May 1, 2018, the video containing the defamatory statements was still on Cardinal's website.

Damages

92. Prior to November 2017, Richard Topping enjoyed an outstanding reputation nationally as a Chief Executive Officer of a health care company.

93. It was well known in the health care industry that he had successfully helped create a large managed care company, increasing its total revenue from approximately \$100 million per year when he was first hired in 2009, to approximately \$850 million per year in 2017. Topping also successfully negotiated and contracted for an additional expansion for Cardinal, which would have increased its total revenue to \$1.15 billion per year by 2018. During Topping's employment, Cardinal also earned approximately \$275 million in profit and savings, and provided more than \$150 million in community reinvestment for local projects and services.

94. The fair market pay for top executives with similar responsibilities is as high as \$2 million.

95. As a result of the defamatory statements made by Meyers and republished by Hollowell, Martin, Odom and Other Unknown Cardinal Employees and Board Members, Richard Topping's business and personal reputation has been severely damaged.

96. Mr. Topping has not been able to secure a position with a health care company since March 26, 2017, despite his best efforts to do so.

97. Mr. Topping has not been able to start any new venture, despite his best efforts to do so.

98. In addition, as a result of the adverse publicity generated by the defamatory statements made during the press conference and then posted on Cardinal's website, Mr. Topping has been asked to step down from several charitable organizations in which he held leadership positions.

99. Mr. Topping has also suffered from anxiety as a result of being unable to secure a new job or start a new venture, and of being asked to step down from charitable organizations that were extremely important to him.

CAUSES OF ACTION

I.

Libel per se

(Against all Defendants)

100. Plaintiff hereby incorporates the allegations made in the foregoing paragraphs, and further alleges as follows:

101. On March 26, 2018, defendants caused defamatory written statements on PowerPoint slides to be shown to the news media at a press conference organized by defendants, as set forth more completely above.

102. These defamatory written statements accused Richard Topping of committing criminal offenses and tended to impeach Mr. Topping in his trade or profession, or otherwise tended to subject him to contempt or disgrace.

103. These defamatory written statements constituted libel *per se*.

104. The defamatory written statements made during the press conference were materially misleading and/or false, as set forth more completely in Exhibit B to this Complaint, which is hereby incorporated as if fully set forth herein.

105. Defendants Hollowell and Martin knew these defamatory written statements were materially misleading and/or false.

106. Defendant Odom knew or reasonably should have known that these defamatory statements were materially misleading and/or false

107. Defendants encouraged, procured, authorized and permitted these materially misleading and false defamatory written statements about Richard Topping to be made during the press conference, or otherwise took part in the publication of the libel.

108. Defendants encouraged, procured, authorized and permitted a video containing these materially misleading and false defamatory written statements about Richard Topping to be posted and thereby republished on the Cardinal website immediately after the press conference, or otherwise took part in the re-publication of the libelous statements;

109. Defendants refused a request to remove the video from the website.

110. Defendants acted negligently, with knowledge that the defamatory written statements were false, and/or in reckless disregard for the truth of the statements, when they encouraged, procured, authorized and permitted these misleading and false defamatory written statements about Richard Topping to be made at the press conference, or otherwise took part in the publication of the libel.

111. Defendants acted negligently, with knowledge that the defamatory written statements were misleading and false, and/or in reckless disregard for the truth of the statements, when they encouraged, procured, authorized and permitted a video containing these false defamatory written statements about Richard Topping to be posted

and republished on the Cardinal website, or otherwise took part in the re-publication of the libel.

112. On March 26, 2018, defendants were employees and Board Members of defendant Cardinal and were acting within the scope of their employment and/or Board responsibilities and duties when they encouraged, procured, authorized and permitted the publication and republication of the misleading and false defamatory written statements about Richard Topping, or otherwise took part in the publication and republication of the libel.

113. Cardinal is therefore legally responsible for the conduct of Hollowell, Martin and Odom.

114. It was reasonably foreseeable to defendants that the conduct set forth above would cause substantial prejudice and damage to Richard Topping.

115. Upon information and belief, defendants intended to cause substantial prejudice and damage to Richard Topping by encouraging, procuring, authorizing and permitting, or otherwise participating, in the publication and republication of the materially misleading and false defamatory written statements about Richard Topping.

116. Upon information and belief, defendants Hollowell and Martin acted with actual malice, spite and ill will towards Richard Topping.

117. The conduct by defendants as set forth above proximately caused substantial damage to Richard Topping, including but not limited to damage to his professional reputation and his ability to earn a living, damage to his personal reputation, and emotional damage, all to be further proved at the trial of this matter.

II.
Slander per se

(Against all Defendants)

118. Plaintiff hereby incorporates the allegations made in the foregoing paragraphs, and further alleges as follows:

119. On March 26, 2018, defamatory oral statements were made to the news media at a press conference organized by defendants, as set forth more completely above.

120. These defamatory oral statements accused Richard Topping of committing criminal offenses and tended to impeach Mr. Topping in his trade or profession, or otherwise tended to subject him to contempt or disgrace.

121. These defamatory oral statements constituted slander *per se*.

122. The defamatory oral statements made during the press conference organized by defendants were materially misleading and false, as set forth more completely in Exhibit B to this Complaint, which is hereby incorporated as if fully set forth herein.

123. Defendants encouraged, procured, authorized and permitted these materially misleading and false oral defamatory statements about Richard Topping to be made at the press conference they organized, or otherwise took part in the publication of the slander.

124. Defendants encouraged, procured, authorized and permitted a video containing these materially misleading and false oral defamatory statements about Richard Topping to be posted and thereby republished on the Cardinal website

immediately after the press conference, or otherwise took part in the re-publication of the slanderous statements;

125. Defendants refused a request to remove the video from the website.

126. Defendants acted negligently, with knowledge that the defamatory oral statements were materially misleading and false, and/or in reckless disregard for the truth of the statements, when they encouraged, procured, authorized and permitted these misleading and false oral defamatory statements about Richard Topping to be made at the press conference, or otherwise took part in the publication of the slander.

127. Defendants acted negligently, with knowledge that the defamatory oral statements were materially misleading and false, and/or in reckless disregard for the truth of the statements, when they encouraged, procured, authorized and permitted a video containing these misleading and false oral defamatory statements about Richard Topping to be posted and republished on the Cardinal website, or otherwise took part in the re-publication of the slander.

128. Defendants were employees and Board Members of defendant Cardinal and were acting within the scope of their employment and/or Board responsibilities and duties when they encouraged, procured, authorized and permitted the publication and republication of the misleading and false defamatory oral statements about Richard Topping, or otherwise took part in the publication and republication of the slander.

129. Cardinal is therefore legally responsible for the conduct of Hollowell, Martin and Odom.

130. It was reasonably foreseeable to defendants that the conduct set forth above would cause substantial prejudice and damage to Richard Topping.

131. Upon information and belief, defendants intended to cause substantial prejudice and damage to Richard Topping by encouraging, procuring, authorizing and permitting, or otherwise participating, in the publication and republication of the materially misleading and false defamatory oral statements about Richard Topping.

132. Upon information and belief, defendants Hollowell and Martin acted with actual malice, spite and ill will towards Richard Topping.

133. The conduct by defendants as set forth above proximately caused substantial damage to Richard Topping, including but not limited to damage to his professional reputation and his ability to earn a living, damage to his personal reputation, and emotional damage, all to be further proved at the trial of this matter.

III.

Intentional Infliction of Emotional Distress

(Against Defendants Hollowell, Martin and Cardinal)

134. Plaintiff hereby incorporates the allegations made in the foregoing paragraphs, and further alleges as follows:

135. Defendants Hollowell and Martin engaged in extreme and outrageous conduct by:

- a. adopting a litigation strategy designed to prejudice Richard Topping in defending himself in the lawsuit filed against him by Cardinal;
- b. acting with actual malice, spite and ill-will to intentionally interfere with Richard Topping's ability to earn a living in the future;
- c. misleading the Cardinal Board of Directors about their own conduct and the conduct of Richard Topping; and
- d. in such other ways as is shown through discovery and as proven at trial.

136. Defendants Hollowell and Martin intended to cause severe emotional distress to Richard Topping by engaging in the extreme and outrageous conduct set forth above, which constituted calculated and intentional conduct specifically directed toward causing emotional distress to Richard Topping.

137. Defendants Hollowell and Martin engaged in extreme and outrageous conduct that indicates a reckless indifference to the likelihood that it would cause severe emotional distress to Richard Topping.

138. The extreme and outrageous conduct engaged in by defendants Hollowell and Martin caused severe emotional distress to Richard Topping, including but not limited to anxiety and depression, which are emotional conditions which are generally recognized and diagnosed by professionals trained to do so.

139. It was reasonably foreseeable to defendants Hollowell and Martin that their conduct would cause severe emotional distress to Richard Topping.

140. Defendant Cardinal had knowledge of all the material facts and circumstances relating to Hollowell and Martin's extreme and outrageous conduct.

141. Defendant Cardinal ratified and condoned Hollowell and Martin's extreme and outrageous conduct by posting the video of the false defamatory statements made during the Cardinal press conference on its website, and by refusing to remove the video from its website for 10 days after a request to remove the video was made, and until instructed to do so by outside counsel hired to defend Cardinal in this action.

IV.
Negligent Infliction of Emotional Distress

(Against Defendants Hollowell, Martin and Cardinal)

142. Plaintiff hereby incorporates the allegations made in the foregoing paragraphs, and further alleges as follows:

143. Defendants Hollowell and Martin owed Richard Topping a duty to be truthful in reporting his conduct to the new Board of Directors of Cardinal, and to lawyers hired to determine if Richard Topping had engaged in misconduct as the CEO of Cardinal.

144. As attorneys, defendants Hollowell and Martin owed Richard Topping a duty not to prejudice him in the adjudicative proceeding they had participated in filing.

145. Defendants Hollowell and Martin violated their duty to Richard Topping by providing incomplete, misleading and false information to the new Board of Directors of Cardinal and/or to the lawyers hired to determine if Richard Topping had engaged in misconduct as the CEO of Cardinal.

146. Defendants Hollowell and Martin violated their duty to Richard Topping by prejudicing him in the adjudicative proceeding they had participated in filing.

147. Hollowell and Martin's conduct was negligent, grossly negligent, and/or reckless.

148. Hollowell and Martin's conduct proximately caused severe emotional distress to Richard Topping, including but not limited to anxiety and depression, which are emotional conditions which are generally recognized and diagnosed by professionals trained to do so.

149. It was reasonably foreseeable to Howell and Martin that their conduct would cause severe emotional distress to Richard Topping.

150. Hollowell and Martin were employees of defendant Cardinal, and were acting within the scope of their employment, when they engaged in the negligent conduct set forth above.

151. Defendant Cardinal is therefore legally responsible for the conduct of Hollowell and Martin.

V.
Negligence

(Against Defendants Hollowell, Martin and Cardinal)

152. Plaintiff hereby incorporates the allegations made in the foregoing paragraphs, and further alleges as follows:

153. Defendants Hollowell and Martin owed Richard Topping a duty to be truthful in reporting his conduct to the new Board of Directors of Cardinal, and to lawyers hired to determine if Richard Topping had engaged in misconduct as the CEO of Cardinal.

154. As attorneys, defendants Hollowell and Martin owed Richard Topping a duty not to prejudice him in the adjudicative proceeding they had participated in filing.

155. Defendants Hollowell and Martin violated their duty to Richard Topping by providing incomplete, misleading and false information to the new Board of Directors of Cardinal, and/or to the lawyers hired to determine if Richard Topping had engaged in misconduct as the CEO of Cardinal.

156. Defendants Hollowell and Martin violated their duty to Richard Topping by prejudicing him in the adjudicative proceeding they had participated in filing.

157. Hollowell and Martin's conduct was negligent, grossly negligent, and/or reckless.

158. Hollowell and Martin's conduct proximately caused damages to Richard Topping, including but not limited to loss of income, loss of business opportunities, emotional distress, and other economic and non-economic damages to be proven at trial.

159. It was reasonably foreseeable to Howell and Martin that their conduct would cause such damages to Richard Topping.

160. Hollowell and Martin were employees of defendant Cardinal, and were acting within the scope of their employment, when they engaged in the negligent conduct set forth above.

161. Defendant Cardinal is therefore legally responsible for the conduct of Hollowell and Martin.

PUNITIVE DAMAGES

162. Plaintiff incorporates the allegations made in all of the paragraphs in this complaint as if fully restated here, and further alleges as follows:

163. The acts of the individual defendants alleged above were willful and wanton as a matter of law, and evidenced actual malice and a reckless disregard for and indifference to the rights of Richard Topping.

164. The willful and wanton acts alleged above proximately caused the injuries suffered by Richard Topping. Mr. Topping is therefore entitled to recover punitive damages against the defendants in their individual capacities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Richard Topping respectfully requests that the Court enter judgment in his favor and against defendants on all counts of the complaint, and award relief as follows:

1. Compensatory damages against the defendants, jointly and severally, in an amount in excess of \$75,000, the exact amount to be determined at trial;
2. Punitive damages against defendants Chuck Hollowell, Stephen Martin, Carmen Hooker Odom, Cardinal Innovations Healthcare Solutions, and Other Unknown Cardinal Employees and Board Members, jointly and severally, in an amount sufficient to deter similar conduct by defendants and others in the future;
3. Pre-judgment and post-judgment interest and recovery of his costs, including reasonable attorneys' fees, against all defendants, jointly and severally; and
4. Any and all other relief to which he may be entitled.

Respectfully submitted this the ^{15th} day of May, 2018.

RUDOLF WIDENHOUSE

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ATTORNEYS FOR PLAINTIFF

North Carolina Medicaid Scandal Broadens on Dem. Gov. Cooper's Watch

spectator.org/north-carolina-medicaid-scandal-broadens-on-democrat-gov-coopers-watch/



Special Report

Bob Barr May 4, 2018, 12:05 am

The only thing missing is Robert Mueller's involvement.

"CMS" is the acronym for the Centers for Medicare & Medicaid Services, the agency responsible for managing the massive federal Medicare and Medicaid programs. In North Carolina, an unfolding scandal with allegations of Corruption, Money and Sexual misconduct may give a whole new meaning to "CMS."

The saga involves that state's Democratic Governor (Roy Cooper), his hand-picked director of the state's Department of Health and Human Services (Dr. Mandy Cohen), and at least one Republican state legislator.

The political backstory to this tale begins with Cooper surprising the pollsters and his opponent — incumbent Republican Gov. Pat McCrory — in November 2016 by winning a narrow victory. Through deft sleight-of-hand, and taking advantage of a quirk in state law, Cooper arranged an early swearing-in for himself just minutes after midnight on January 1, 2017. That legerdemain allowed Cooper just 12 days later to appoint Cohen, at the time Obama's Chief Operating Officer of Medicaid, to head the North Carolina DHHS before Barack Obama left office.

Thus was set the stage for the Cooper Administration to bring to a screeching halt what had been one of his predecessor's top priorities — rolling back years of reckless spending by North Carolina Democrats. One of McCrory's main targets had been Medicaid spending in the state; which had come to swallow nearly \$15 billion of North Carolina's \$23 billion annual budget.

The runaway Medicaid spending had placed North Carolina in a financial bind, with little cash for anything else. Thus, in 2015 McCrory and the Republican state legislature passed a law that would limit Medicaid spending, remove management of the program from the state Health Secretary and contract it out to private companies, and prohibit further expansion of the program; all steps permitted under federal law.

As soon as Cooper had himself sworn in early, he immediately submitted a request to the Obama Administration to illegally expand Medicaid and maintain government control of the program.

A week later, and not by coincidence, the Obama Administration declared it would expedite approval of Cooper's expansion. The very same day, Cooper announced he would name Cohen who, as the responsible CMS official in the Obama Administration, had just approved Cooper's illegal Medicaid expansion request.

The only speed bump encountered by the Cooper-Cohen team was the result of quick thinking by North Carolina Senate President Phil Berger and House Speaker Tim Moore, leading to a federal court order blocking the scheme until the Trump Administration took office and shut it down. Undeterred, Cooper set out to expand Medicaid anyway; by undercutting the Republicans' 2015 law.

Any good corruption story needs money, and here there was plenty to be found. As the newly minted state Health Secretary, Cohen cleverly rebranded the state law from Medicaid "reform" (read, "reduction") to Medicaid "transformation" (that is, "expansion"). This "transformation" magically expanded Medicaid coverage and services via more than 13 new concepts.

The next step for Cohen was to gain access to the vast Medicaid money then being managed not by the government bureaucracy she now ran, but by an independent Managed Care Organization (MCO). The MCO in question here, Cardinal Innovations, had been created under state law by Republicans, to more efficiently administer the program and to prevent Democrats from endlessly expanding it. Cardinal had done just that; so well, in fact, that in 2016 the Charlotte-based MCO was recognized as one of the best Medicaid health plans in the country for its quality of care and low cost to taxpayers. That success notwithstanding, Cohen set out to take control of Cardinal.

First, Cohen needed to clear out Cardinal's CEO, Richard Topping, a former George W. Bush appointee, who is considered to be one of the GOP's few experts in Medicaid. Next, Cohen used the power of her state post to disband the Cardinal board and pack it with Democrats loyal to her and Cooper. The new and compliant leadership included Carmen Hooker-Odom, who had been health Secretary to disgraced former Governor Mike Easley; and Bryan Thompson, a lawyer who had twice been charged with defrauding the elderly.

So much for the corruption and the money. The allegations of sexual misconduct come in through a side door, via a Republican supporter of Cohen, State Sen. Tommy Tucker. Tucker's distaste for Cardinal was apparent at a March 26, 2018 news conference he attended and referred to Topping as a "rat." The reason for such animosity comes into focus upon digging a

bit deeper.

Tucker's presence at the news conference reminded people that Cardinal was formerly known as Piedmont, a healthcare provider that treated patients in Tucker's district. In 1999, Tucker served on Piedmont's board. In December of that year, he became embroiled in allegations of sexual misconduct involving a female board member. Tucker was an elected official; the woman a local government employee. As Alice in Wonderland observed, things become "curiouser and curiouser."

The Chairman of the Cardinal board ousted by Cohen, Lucy Drake, was also on that Piedmont board with Tucker. It was Drake who had challenged Tucker on the sexual misconduct allegations, and demanded that he be removed from that board. In January of 2000, Tucker was notified by Richard Stone, another elected official, that if Tucker did not resign, Stone would hold an open meeting on the allegations against him. On January 31, 2000, a mere 56 days after having been reappointed to the Piedmont board for a second term, Tucker resigned.

As this saga continues to unfold in the courts, and in the political arena, the real losers are the people of North Carolina; both those who rely on the Medicaid safety net for vital care, and the state's taxpayers who once again are funding expansionist spending by conniving Democrats uncaring about laws or ethics.

Roy Cooper (Kyle Taylor/Creative Commons)



April 21, 2018

Trey Suttan
CEO
Cardinal Innovations Healthcare
550 S. Caldwell St
Charlotte, NC 28202

Via Email

Re: False and Misleading Statements on Cardinal Innovations Website

Dear Mr. Suttan:

I have been retained by Richard Topping to demand that Cardinal Innovations HealthCare (hereinafter "Cardinal") immediately remove from its website the video containing false, misleading and defamatory statements made by Kurt Meyers (and others) during the press conference organized by Cardinal on March 26, 2018.

Since both you and Chuck Hollowell were employed by Cardinal during 2017, and since Mr. Meyers specifically stated during the press conference that his investigation had been directed by you personally, and that he had the "complete cooperation of Cardinal's current employees," I will focus this letter on statements made by Mr. Meyers that you and Mr. Hollowell knew, or reasonably should have known, were false and misleading. These include, but are not limited to, the following statements.

Facts

1. The Alleged "**Theft** of Cardinal Information and Intellectual Property" by Mr. Topping on November 17, 2017 in Order to "Launch a New Venture" to Compete with Cardinal.

For almost ten minutes, from minute 8:17 on the video currently posted on Cardinal's website until 15:05, and again from minute 17:30 until minute 21:07, Mr. Meyers claimed that on the afternoon of November 17, 2017, Richard Topping "stole" intellectual property and information from Cardinal by downloading material from his W drive. He further alleged that his motive for this "theft" was to launch "a new venture after he left and also during the time that he was with Cardinal to profit from Cardinal Innovations," and that this new venture would compete with Cardinal "in the same space." During this entire time, Mr. Meyers displayed to the news media a series of PowerPoint slides with the heading "**Theft of Cardinal Innovations Information and Intellectual Property**" in bold.

However, as you and Mr. Hollowell knew, these claims were false and misleading for a number of reasons.

First, there was no "theft." Since Mr. Topping was still the CEO of Cardinal on the afternoon of November 17, you and Mr. Hollowell knew that *he had the absolute right to access any items on his W drive*, which was his dedicated personal space on Cardinal's server. He therefore "stole" nothing from Cardinal on November 17, 2017.

Second, as you and Mr. Hollowell would have also known by March 26, 2018 just by looking at Mr. Topping's W drive (if you hadn't known it previously), the vast majority of the information on that drive was Mr. Topping's personal information, such as his personal tax returns, wedding invitation list, continuing legal education information, credit reports, and personal real estate documents. Mr. Topping certainly had the absolute right to download that information from his W drive on November 17, 2017.¹

Third, to support his claim that Mr. Topping was planning to start a new venture to compete with Cardinal, Mr. Meyers displayed on a slide and discussed at length a sketch that was found in Mr. Topping's office (18:11), which he admitted had probably been created during the summer of 2017. Although Mr. Meyers claimed not to know if it was Mr. Topping's handwriting, you and Mr. Hollowell would have known that the handwriting was that of the former CFO, and that the sketch was done not to create a new venture to compete with Cardinal, but rather *as a part of the effort by the senior leadership at Cardinal (including Mr. Hollowell and the Board) during the summer of 2017 to determine whether the structure of Cardinal could be changed so that it could comply with North Carolina's 2015 Medicaid reform law*. That law provides for the termination of Cardinal's contracts, and the transition of all management of Medicaid to commercial plans and provider-led entities. As the two of you also knew, this was also the context for the email he sent to Lucy Drake and Carol Hoskins on June 3, 2017 specifically asking for their "advice" because "there may not be any choices left at this point."

Finally, you and Mr. Hollowell had to know that Mr. Meyers, whether intentionally or unintentionally, was conflating the executive and Board discussions *during the summer of 2017* (about trying to modify the structure of Cardinal to comply with upcoming changes in the state's Medicaid laws, so as to avoid Cardinal shutting down and terminating its entire workforce) with Mr. Topping's effort to find employment through a new venture after he left Cardinal, as expressed in the November 26, 2017 email to Peter Murphy that Mr. Meyers relied upon to bolster his assertion that Mr. Topping's "motive" to steal confidential information on November 17, 2017 was to start his own competing company. (@14:29 of the video).

Indeed, a number of Cardinal's employees on November 26, 2017 (who were still employed at the time of Mr. Meyers' press conference), including Amy Kendall, knew that the new venture Mr. Topping was contemplating after leaving Cardinal was the development of a smartphone "app" that had nothing to do with competing with Cardinal

¹ There was no evidence cited by Mr. Meyers indicating exactly what documents or information had in fact been downloaded on November 17, although as noted above Mr. Topping had the right on that day to access everything on his W drive.

or with any of Cardinal's intellectual property. Obviously, the reference to the "FCC [Federal Communications Commission] project" in that November 26, 2017 email to Mr. Murphy, which Mr. Meyer avoided mentioning to the media, made it clear that Mr. Topping's conversations had nothing to do with Cardinal's business.

Despite this, you and Mr. Hollowell sat silent while Mr. Meyers mislead the media by claiming that Mr. Topping "stole" confidential information on November 17, 2017, and that his "motive" for this alleged "theft" of Cardinal's intellectual property was to benefit himself in starting a new venture that would compete with Cardinal. Accusing someone of a crime is defamation "*per se*" in North Carolina. By posting this defamatory statement on Cardinal's website, you republished it, and are therefore liable for the harm it has caused to Mr. Topping.

2. Mr. Topping's Alleged "Pattern of Conduct Designed at Self-Enrichment" by "Inflating his Salary."

For approximately thirty-five minutes, from minute 15:05 of the video until about minute 50:00, Mr. Meyers repeatedly claimed that Richard Topping had engaged in a pattern of "self-enrichment" and that he "took steps to enrich himself" even beyond his alleged "new venture." For example, Mr. Meyers asserted that during his years as the CEO of Cardinal, Richard Topping "took steps to inflate his salary" and *increased "his own salary and his bonus package while he still sat in the CEO's chair."* One of his PowerPoint slides alleged that "soon after becoming CEO, Topping requested that the Board increase his salary and bonus package." (@ 21:21 of the video), and that "as he took over, he engaged *in repeated efforts to ask that his compensation be increased.*" (@ 25:40 of the video). These claims were false and misleading.

In fact, as you and Mr. Hollowell well knew, Mr. Topping's salary and bonus package was determined by the Cardinal Board *based upon an independent market compensation survey* conducted by Willis Towers Watson, a company that was retained by and reported to the Board. At no time did Mr. Topping determine, set or increase his own pay. He had no authority to do so. Contrary to Mr. Meyers assertions about what Mr. Topping allegedly did "soon after becoming CEO," for the first year he was CEO Mr. Topping worked without any employment agreement at all and accepted the salary and bonus package the Board offered based on the compensation survey it had commissioned. You knew that he never "engaged in repeated efforts to ask that his compensation be increased," or "insist[ed] on inflated compensation," as alleged by Mr. Meyers. (@ 25.40 of the video).

In addition, the Cardinal Board retained independent outside legal counsel when setting or changing Topping's compensation, conducting his evaluations, and authorizing bonuses. Debbie Durban of Nelson Mullins, Mr. Hollowell's former partner, provided the Board with independent legal counsel on these issues. This relevant fact was omitted from Mr. Meyers presentation.

Although Mr. Meyers claimed that Mr. Toppings salary was "inflated," you and Mr. Hollowell knew that he was never compensated beyond the 50th percentile of the market salary of CEO's of similarly sized health companies, which was (and still is) identical to the pay range paid to all Cardinal employees. Indeed, all Cardinal employees, including *all* executives, were paid at the 50th percentile of the market salary for similar positions in similarly sized companies based on the Willis Towers Watson survey data, including Mr. Hollowell, who was compensated \$522,000 in 2017 (\$320,000 salary; \$112,000 bonus; \$60,000 long term incentive; and a \$30,000 relocation allowance).

To the extent that Mr. Meyers attempted to claim during the press conference that Mr. Topping's salary was excessive for a state employee, both you and Mr. Hollowell knew that Cardinal was not (and is still not) part of the state personnel system, for the CEO or any other employee. This meant that the Board – not the state – set Mr. Topping's pay. You also knew that Cardinal's Board specifically told the state that it disagreed that the state had the authority to set CEO pay and filed a lawsuit against the state raising that issue. That lawsuit is still pending against the state, and *the pay of executives at Cardinal is still determined by the Board, based on the market survey compensation data.*

By posting these defamatory statements on Cardinal's website, you republished it, and are therefore liable for the harm it has caused to Mr. Topping.

3. Mr. Topping's Alleged "Pattern of Conduct Designed at Self-Enrichment" by Creating Employment Agreements that Contained Alleged "Daisy-Chain" Provisions and an Excessive and Improper Severance Agreement.

Mr. Meyers claimed Mr. Topping had insisted that his employment agreement contain what he derisively called a "daisy-chain" provision (most commonly referred to by employment lawyers who routinely draft them as a "change of control" provision), and that Mr. Topping intentionally included this provision in the employment agreements he entered into with his executive team "in order to strengthen his own control and to strengthen his arguments for benefiting from Cardinal." Meyers asserted Mr. Topping did this so that if he left Cardinal, "the other executives could leave too and get their own severance as a result of leaving," (@ 21:30 of the video), and he would therefore be in a position to threaten the Board with a mass exodus of executives if the Board did not do what Mr. Topping wanted.

At a minimum, Mr. Hollowell knew first-hand that what Mr. Meyers had alleged was false and misleading. He knew that Mr. Topping had worked as the CEO for a year without any employment or severance agreement. Hollowell knew that Topping's initial employment agreement, including the "change of control" provision, had been drafted by Debbie Durban, a partner at Hollowell's former firm, Nelson Mullins. Hollowell knew this provision had been included in the template created by Durban, and had not been "requested" by Mr. Topping. He knew that it had been approved by the Board, on the advice of Durban, the Board's independent counsel.

Hollowell also knew that Peter Murphy had insisted on having a similar "change of control" provision in his employment contract, and that Hollowell himself had drafted the employment agreements for all Cardinal's senior executives, including Hollowell's own contract and Peter Murphy's, which included "change of control" provisions. In short, Hollowell knew that Mr. Meyers' claim that Mr. Topping had insisted on these provisions to create leverage with the Board years later was pure fantasy. Yet he remained silent.

Mr. Meyers also made misleading statements designed to create the impression that Mr. Topping had manipulated the information provided to the Board in November 2017 in order to get the Board to approve his two-year severance payment. For example, he claimed that after Cardinal had gotten a legal opinion from Chris Jones asserting Mr. Topping was only entitled to one year of severance, "Richard Topping asked for his own lawyer, Mr. Wilder, to give a legal opinion on how much severance he was entitled to." In fact, it was Mr. Hollowell who recommended this. Mr. Hollowell also knew that the Board had hired outside counsel, Debbie Durban of Nelson Mullins, to review both Jones' and Wilder's opinions, and provide independent advice as to the appropriate amount of severance to be paid.

Finally, Mr. Hollowell knew that he had loaded all of this documentation into the Board's electronic packet on the day of the meeting at the same time, and together, as was the normal procedure for distributing materials to the Board, and that the Board had voted to approve two years severance at a closed session with its independent legal counsel, outside the presence of Mr. Topping.

In short, at a minimum, Mr. Hollowell knew that the representations made by Mr. Meyers about the genesis and reason for the "change of control" provision in the various employment agreements, and the basis on which the Board voted on November 17, 2017, to award Mr. Topping two years of severance, were misleading. Both you and he would have known that since the previous Friday, when Mr. Meyers made his private presentation to the Board. Yet you not only allowed Mr. Meyers to make these misleading and derogatory statements on March 26, 2018 to the media Cardinal had assembled; you posted a video of these statements on Cardinal's website.

Demands

On behalf of Richard Topping, we hereby request the following partial relief:

1. That the video of the press conference held on March 26, 2018 be taken down from the Cardinal website immediately, and no later than 12:00 pm (noon) on Monday, April 23, 2018. The posting of this video constitutes the republication of the defamatory statements made at the press conference on March 26, 2018, and every hour this video remains on the Cardinal website causes additional damage to Mr. Topping. The failure to remove this video from the website as soon as humanly possible will constitute further evidence that you

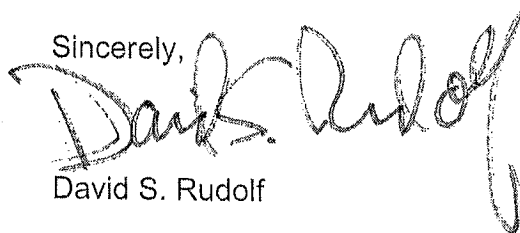
and Cardinal, along with its Board of Directors, have acted and are acting knowingly and recklessly in posting the defamatory video.

2. That a public apology, to be reviewed and agreed upon by Mr. Topping, be posted on the Cardinal website and distributed to all members of the media who were invited to or informed of the press conference held on March 26, 2018, acknowledging that statements made during that press conference were inaccurate and misleading.
3. That Chuck Hollowell be terminated from Cardinal for violating the Rules of Professional Conduct of the North Carolina State Bar. Specifically, by authorizing Mr. Meyers to make a statement to the press just a few hours after Cardinal filed a lawsuit against Mr. Topping seeking the repayment of his severance, and by authorizing the posting of that video on the Cardinal website, Mr. Hollowell has violated Rule 3.6(a) of the North Carolina Rules of Professional Conduct, which provides:

"A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter."

4. That a copy of all emails referenced in Mr. Meyers' presentation, and all related documents that provide relevant context to those emails and to Meyers' false and misleading assertions, be provided to counsel for Mr. Topping so that counsel can fairly determine the full extent of the false and misleading statements made, and the knowledge that Cardinal and its remaining executives had of their falsity, in deciding whether to file a defamation action against Cardinal, its executives and/or its Board members.

Sincerely,



David S. Rudolf

cc: Chuck Hollowell, General Counsel
Carmen Odom Hooker, Vice Chair, Board of Directors
Bryan Thompson, Chair, Board of Directors