

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 18-CVS-5899

SOUTHEAST ANESTHESIOLOGY
CONSULTANTS, PLLC, AMERICAN
ANESTHESIOLOGY OF THE
SOUTHEAST, PLLC, MEDNAX
SERVICES, INC., AND RUSSELL A.
SAUDER, M.D., M.B.A.,

Plaintiffs,

v.

THE CHARLOTTE-MECKLENBURG
HOSPITAL AUTHORITY, d/b/a
CAROLINAS HEALTHCARE SYSTEM
AND d/b/a ATRIUM HEALTH, THOMAS
M. WHERRY, M.D., TOTAL
ANESTHESIA SOLUTIONS, LLC, AND
SCOPE ANESTHESIA OF NORTH
CAROLINA, PLLC,

Defendants.

**AMENDED ANSWER AND
COUNTERCLAIMS OF THE
CHARLOTTE-MECKLENBURG
HOSPITAL AUTHORITY**

NOW COMES Defendant The Charlotte-Mecklenburg Hospital Authority, which is now known as Atrium Health and recently also known as Carolinas HealthCare System (“**Atrium Health**”), through counsel, submitting its Amended Answer and Counterclaims and making a demand for a jury trial.

AMENDED INTRODUCTORY STATEMENT

1. Since Atrium Health filed its Answer and Counterclaims, the business struggles of the Plaintiffs’ controlling corporate parent, Mednax, Inc. (“**Mednax**”), have become the subject of discussion in the business media and the investing public. In fact, some investment professionals have stated that they now believe that Mednax may be on the verge of collapse.

2. As facts demonstrating Mednax's instability have been revealed, Mednax has increased the intensity of a fear-mongering smear campaign against Atrium Health to try to bully Atrium Health into reversing its decision to end its relationship with Mednax affiliate Southeast Anesthesiology Consultants, PLLC ("**SAC**") and give badly needed good news to its shareholders. At the same time, Mednax's campaign has publicized false and misleading information designed to undermine efforts by Scope Anesthesia of North Carolina, PLLC ("**Scope**"), Mednax's replacement, to supplant Mednax in Atrium Health facilities. As described below, Mednax's intensified attacks form additional bases for liability and for punitive damages because of this malicious, willful, and wanton misconduct.

3. Still, in recent days, Mednax's corporate struggles have become more exacerbated and its reaction more desperate. Rather than acknowledge the reality that its core business model of acquiring physician practices then artificially suppressing physician compensation costs is unsustainable, Mednax has repurposed its disinformation campaign against Atrium Health to mislead the investing public about the fundamental problems with its business.

4. On April 26, 2018, financial news outlet CNBC ran a televised segment and accompanying website article reporting that well-known investment professional and short-seller Jim Chanos had taken a formidable short position in Mednax stock.¹ Chanos, who is a "research intensive short-seller," is known for his accurate forecast of Enron's collapse. Commenting on Mednax and another healthcare company (Envision Healthcare), Chanos explained that Mednax's business model of acquiring physician practices then hiring physicians back at below market compensation could not last beyond a short-term post-acquisition agreement with

¹ See Lovelace, Berkeley, Jr., *Short-seller Jim Chanos bets against two health-care companies: They 'might be worth nothing,'* CNBC (Apr. 26, 2018), available at <https://www.cnbc.com/2018/04/26/short-seller-jim-chanos-bets-against-two-health-care-companies.html>.

physicians. Chanos explained that although Mednax's model might limit physician compensation costs for an initial term of up to seven years, after that, physicians demand market compensation, which imposes costs on Mednax that Mednax cannot afford to pay.

5. Chanos compared Mednax to PhyCor Inc., a company that went bankrupt in the 1990s. Having closely examined information concerning Mednax, including facts revealed in Mednax's litigation in this Court,² Chanos said his firm was "betting these companies [Mednax and Envision Healthcare] might be worth nothing."

6. Mednax stock plummeted more than 11% that same day, capping one of the worst-performing periods for any healthcare stock in this country.

7. Reeling from the precipitous drop in its share price, on May 1, 2018, Mednax was forced to hold an investor call a week earlier than planned. During that call, Mednax and its CEO, Roger Medel, continued to put forward misleading statements about the facts of this case ostensibly to obscure the reality that Mednax's flawed business model had been exposed and to mislead investors to believe that Mednax's situation was not as desperate as it actually is.

8. For instance, Medel repeated the falsehoods contained in Mednax's smear campaign against Atrium Health, falsely portraying to investors what it has falsely portrayed to this community, that the primary reason Mednax affiliate SAC did not enter a new agreement with Atrium Health was that Atrium Health "planned to adopt new staffing patterns that would reduce the number of physicians providing services, and in some cases have facilities with no

² Based on the information Chanos said he obtained from the litigation, he was referring to the case *Southeast Anesthesiology Consultants, PLLC and Mednax Services, Inc. v. Rose and The Moses H. Cone Memorial Hospital Operating Corporation d/b/a Cone Health, et al.*, 2017-CVS-9002 (N.C. Business Court/Guilford County Superior Court).

physician[] anesthesiologist presence.”³ As detailed in the Counterclaims below, Atrium Health *has not* “planned to adopt new staffing patterns” at all, let alone as Mednax has described. These statements by Mednax are misrepresentations intended to foster fear, poison the public mindset and pressure Atrium Health to the bargaining table.

9. In the context of the investor call, however, Medel’s misrepresentations had a different purpose. The *real* reasons that Atrium Health decided not to enter a new agreement with Mednax was because Mednax could no longer compete with other anesthesiology providers. Specifically, Mednax refused to extend the “physician lease” model (already existing at five of the facilities served by Mednax) to the CMC Facilities even though other anesthesiology providers were willing to do so. In addition, Mednax would not consider contract terms to remedy Mednax’s workforce stability problems observed in Mednax’s physician compensation dispute that caused a public health crisis in July 2017.

10. If Medel were to disclose to investors the *real* reasons that Atrium Health turned elsewhere for anesthesiology services, that would confirm that Chanos’ analysis was correct: Mednax’s business model is unsustainable and failing and had *in fact failed* in a flagship relationship with Atrium Health.⁴

³ Edited Transcript of MD Earnings Conference Call or Presentation May 1, 2018, *available at* <https://finance.yahoo.com/news/edited-transcript-md-earnings-conference-210850365.html> at 5 (hereafter “**Call Transcript**”).

⁴ Later in the investor call, Ryan Daniels of William Blair & Company questioned Medel’s assertion that Atrium Health’s decision to alter staffing patterns impacted the contract negotiations. Call Transcript at 10. Daniels asked for Medel to “help us understand a little bit more [Southeast’s] concern on staffing levels.” *Id.* To Daniels, Medel’s assertion that Atrium Health had changed staffing levels appeared “a little perplexing” and he thus asked if Medel could explain Atrium Health’s “motivation” to do so. *Id.*

Medel dodged the question, saying “I want to be careful about what I say just because there is a lawsuit going on.” *Id.* He then provided a partial explanation that had nothing to do with “staffing levels,” saying that Atrium Health sought to “bill for the services that the physicians provide” (a concept consistent with a “physician lease”). *Id.* Medel, of course, could not answer Daniels’ question because

11. Other statements by Medel likewise perpetuated misimpressions with investors about the extent of Mednax’s fundamental problems. For instance, analyst Kevin Fischbeck of Bank of America specifically asked Medel whether the Atrium Health dispute (referred to as “the North Carolina issue”) was “unusual,” whether it was a “one-off in [Medel’s] mind.” Medel responded unequivocally, “Yes, it’s a unique situation for us and—yes, which is why we’re dealing with it as forcibly as we are. It’s a unique situation.”⁵

12. In truth, this dispute is at least the *third* instance in a *six month* period where a major health system or hospital has turned away from Mednax for the same reasons—Mednax cannot simultaneously meet healthcare system client needs and physician compensation demands. The first instance concerned Mednax’s loss of its contract with Cone Health in Greensboro, North Carolina, the situation cited by Chanos in his appearance on CNBC. The second concerned Mednax’s loss of its contract with Duke Raleigh Hospital in Raleigh, North Carolina.

13. It should not be overlooked that this dispute—Mednax’s third substantially similar controversy— is a saga that began with physician compensation problems that Chanos’ analysis predicts. In July 2017, when Mednax’s post-acquisition contract with physicians was set to expire, a physician compensation dispute erupted that caused Mednax to default under its agreements with Atrium Health and created what Mednax described was “a public health crisis in the region.”

14. Mednax’s call obscured still other facts about this dispute from investors. Medel made the untrue claim, for instance, that in negotiations with Atrium Health “Southeast made

Mednax had fabricated the “staffing patterns” explanation for why Mednax had not won a new contract with Atrium Health in the first place.

⁵ Call Transcript at 14.

concerted efforts to meet demands that Atrium had made.” In fact, Mednax rejected out-of-hand the “physician lease” term in a new contract, a term Atrium Health had made clear before negotiations began was required for a new agreement. Medel also claimed that “The decision to allow [current Mednax physicians] to continue their lives in Charlotte rests wholly on Atrium’s shoulders.” In truth, the only barrier to Mednax physicians continuing to work in Atrium Health’s facilities was Mednax’s threats of litigation against any who pursued employment by Scope.

15. Mednax’s public, misleading statements and its smear campaign against Atrium Health are unprecedented in the healthcare industry. Although it is supposed to be a healthcare entity providing physician services, and proclaims it is “Led by Physicians,” Mednax has been unconstrained by medical ethics and standards of conduct and has shown it will do or say virtually anything, no matter how untrue, detestable, or contrary to sworn commitments of medical providers to try to force a business deal that it lost in fair competition with others.

16. Mednax’s newly-ratcheted campaign unabashedly attempts to create unfounded fear in patients and to intimidate anyone who may seek to serve this community independent of Mednax. Through social media, print, and radio advertising, Mednax’s campaign falsely claims that Atrium Health does not care about its patients or their safety. The campaign includes media buys that incorporate colorful metaphors, such as Mednax’s false claims that “Anesthesiologists are being cut out of surgery,” and fabricate dramatic hospital scenarios, such as a radio ad that portrays frantic pleas from fictitious medical personnel, saying “Where is the anesthesiologist? We need the anesthesiologist NOW.” In a recent radio ad, an actress—playing the part of a mother whose child is in surgery—frantically requests that her child be rescued from surgery supervised by anesthesiologists who are only “trying to get their bearings.”

17. Mednax’s new attacks also target doctors who are joining Scope. Notwithstanding the ethical rules of the North Carolina Medical Board, the American Medical Association, and the American College of Anesthesia that prohibit such conduct, Mednax’s ads overtly attempt, without any basis in fact, to sow doubts in Atrium Health’s patients’ minds about the capabilities and experience of Scope physicians. A recent Mednax ad expressly directed patients to reconsider having procedures done at Atrium Health because “new doctors” will be in the operating room, which might lead to something “go[ing] wrong.” These actions are desperate, deplorable, and unbecoming of professionals who are supposed to be committed to the greater good of our communities.

* * *

18. Mednax, Inc. (“**Mednax**”) is a publicly-traded for-profit healthcare company. It controls Plaintiffs SAC, American Anesthesiology of the Southeast, PLLC (“**AASE**”), and Mednax Services, Inc. (“**Mednax Services**”), which are its subsidiaries and affiliates.

19. Even though the Complaint tries to portray the Plaintiffs as mere “anesthesiology groups” (SAC and AASE) and a “service provider” (Mednax Services), they are actually corporate extensions of Florida-based Mednax.

20. Plaintiff SAC is not in any real sense the same entity that provided services to Atrium Health in 2010 when a Mednax affiliate acquired SAC. SAC has not been owned by any physicians who actually work in Atrium Health facilities since 2010, and Plaintiff AASE never has been. Both entities, in fact, are owned by a single person, Eric Mason, M.D., M.B.A., who was the Mednax South Region President.

21. As for Plaintiff Mednax Services, the Complaint omits that it is the direct subsidiary of Florida-based Mednax and that the “services” it provides to SAC and AASE are so

extensive (contract negotiations, human resources, financial services, recruiting, and credentialing of providers) that Mednax Services and Mednax, as a practical matter, serve as SAC's and AASE's controlling corporate parents.

22. Likewise, Plaintiff Russell A. Sauder, M.D., M.B.A. (“**Sauder**”), portrayed as a “local physician,” is in reality a corporate officer who takes instructions from Mednax. His title is “Corporate Medical Director.” Sauder has made false and misleading statements, at Mednax's behest, designed to harm Atrium Health.

23. Plaintiff SAC, since being acquired by Mednax, has demonstrated a lack of commitment to providing services consistent with Atrium Health's mission. For instance, Atrium Health, in 2013, began requiring anesthesiology service providers to transition to a “professional staffing” or “physician lease” model as the basis of their professional services agreements with Atrium Health. This model allows Atrium Health to serve as the provider of such services and direct the billing of the professional component of anesthesia services. This, in turn, allows Atrium Health to establish more affordable pricing, which results in lower surgical costs for patients and other payors.

24. Unlike other anesthesia service providers, Mednax repeatedly refused to agree to this model and used brinksmanship tactics to avoid it. Consequently, a primary reason Atrium Health did not enter a new agreement with Mednax was Mednax's refusal to accept a physician lease model at Carolinas Medical Center, Levine Children's Hospital, and Carolinas Medical Center - Mercy (the “**CMC Facilities**”).

25. In addition, Mednax was willing to put life-saving Atrium Health services at risk to gain leverage in its compensation dispute with physicians in July 2017. In that dispute,

Mednax refused to offer acceptable compensation and benefits, and a substantial majority of physicians resigned as a result.

26. Rather than meet the physicians' requests, Mednax tried to recruit replacements. When Mednax realized it could not do so, it sued forty-seven of its own doctors—accusing them of trying to “extort” compensation increases—and demanding that the court force the physicians Mednax tried to replace back to work.⁶ These strong-arm tactics are not unique to this case. Mednax has sued its former physicians in Greensboro for \$100 million.

27. Mednax's pleadings admitted that its bungled efforts to squeeze physicians had caused what Mednax described as “a public health crisis in the region.” Its gambit, in fact, forced Atrium Health to intervene in the case to preserve the status quo and avert the crisis Mednax had created.

28. Atrium Health is not alone in concluding that Mednax's business model does not meet healthcare needs of the people of North Carolina. In the past year, more than fifty of SAC's own physicians have filed complaints with the North Carolina Medical Board asserting that SAC and Mednax's business practices violate North Carolina medical ethics rules, and state and federal laws. And, as described above, Duke Raleigh Hospital and Cone Health have ended their relationships with Mednax.

29. In this litigation, Mednax has completely fabricated the factual premises upon which its Complaint is based. For example, information Mednax claims constitute Mednax's trade secrets is information that does not belong to Mednax and is not even confidential and thus could never constitute Mednax trade secrets. Further, contrary to Mednax's contentions, Atrium Health did not conspire to divest Mednax of its contract or to act in any way “monopolistically.”

⁶ See *American Anesthesiology of the Southeast, PLLC et al. v. Melanie Bamert, M.D., et al.* (Case No. 17-CVS-13100, Mecklenburg County Superior Court).

Atrium Health, in fact, gave Mednax *the first opportunity* to agree to a new agreement, but Mednax declined.

30. Mednax's Complaint presents a legal ploy lacking in basis and which does not assert plausible claims. Its endgame presents the preposterous request that this Court, through an injunction, force Atrium Health to do business with the author of an unprecedented, unlawful smear campaign that violates medical ethics rules.

31. As set forth below, the Court should enter injunctive relief compelling Mednax's smear tactics to come to an end and enter judgment against the Plaintiffs and in favor of Atrium Health, both on the claims that Plaintiffs have alleged in their Complaint and on Atrium Health's Counterclaims.

ANSWER

FOR A FIRST DEFENSE

Atrium Health answers the correspondingly numbered paragraphs of the Complaint as follows:

1. Atrium Health denies the allegations of paragraph 1.
2. Atrium Health lacks sufficient knowledge or information to form a belief as to Plaintiffs SAC's and AASE's history in North Carolina and their relationships with entities other than Atrium Health, and therefore denies those allegations. Atrium Health admits that prior to and after Mednax's acquisition of SAC, SAC and its predecessor provided services to Atrium Health. Atrium Health denies the allegations of paragraph 2 except as expressly admitted.
3. Atrium Health denies the allegations of paragraph 3.
4. Atrium Health admits that it recently began doing business as Atrium Health. Atrium Health denies the allegations of paragraph 4 except as expressly admitted.

5. Atrium Health denies the allegations of paragraph 5.

6. Atrium Health denies the allegations of paragraph 6.

7. Atrium Health admits that it was willing to, and in fact did, negotiate in good faith with Plaintiffs and that as part of these good faith negotiations Atrium Health agreed to extend the term of its agreements with Plaintiffs through June 30, 2018. Atrium Health denies the allegations of paragraph 7 except as expressly admitted.

8. Atrium Health denies the allegations of paragraph 8.

9. Atrium Health denies the allegations of paragraph 9.

10. Atrium Health denies the allegations of paragraph 10.

11. Atrium Health lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 11, and therefore denies those allegations.

12. Atrium Health lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 12, and therefore denies those allegations.

13. Atrium Health lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 13, and therefore denies those allegations.

14. Atrium Health lacks knowledge or information sufficient to form a belief concerning the allegations of paragraph 14, and therefore denies those allegations.

15. Atrium Health admits that it is a body corporate and politic organized under the North Carolina Hospital Authorities Act, its principal place of business is Mecklenburg County, North Carolina, that it has been known as Carolinas HealthCare System, that it currently does business under the name Atrium Health, and that it operates hospital facilities identified in paragraph 15. Atrium Health denies the allegations of paragraph 15 except as expressly admitted.

16. Atrium Health denies the allegations of paragraph 16.

17. Atrium Health admits that it reports publicly the compensation of its highest paid executives, and the allegations of paragraph 17 are consistent with such reports. Atrium Health denies the allegations of paragraph 17 except as expressly admitted.

18. Atrium Health lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 18, and therefore denies those allegations.

19. Atrium Health lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 19, and therefore denies those allegations.

20. Atrium Health lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 20, and therefore denies those allegations.

21. Atrium Health lacks sufficient knowledge or information to form a belief as to Plaintiff SAC's history in North Carolina and contractual agreements with Plaintiff AASE, and therefore denies those allegations. Atrium Health admits that SAC has been the exclusive provider of anesthesiology services to certain Atrium Health facilities in North Carolina and further that SAC and its affiliates have assumed duties of trust and confidence as a result. Atrium Health denies the allegations of paragraph 21 except as expressly admitted.

22. Atrium Health lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 22, and therefore denies those allegations.

23. Atrium Health admits that it, and for Carolinas HealthCare System Pineville, its subsidiary, Mercy Hospital, Inc., entered into contracts with SAC to provide anesthesia services. Atrium Health denies the allegations of paragraph 23 except as expressly admitted.

24. Atrium Health admits that it, and for Carolinas HealthCare System Pineville, its subsidiary, Mercy Hospital, Inc., entered into contracts with SAC to provide anesthesia services. Atrium Health denies the allegations of paragraph 24 except as expressly admitted.

25. Atrium Health lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 25, and therefore denies those allegations.

26. Atrium Health lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 26, and therefore denies those allegations.

27. Atrium Health denies that it has or had knowledge of the restrictive covenants at all times relevant to the events of the Complaint. Plaintiffs have represented to Atrium Health that they entered such covenants with one or more physicians, but Atrium Health lacks knowledge or information sufficient to form a belief whether such representations were true. Atrium Health denies the allegations of paragraph 27 except as expressly admitted.

28. Atrium Health admits that it moved to intervene in the case referenced in paragraph 28 and that Atrium Health filed the Affidavit of Spencer Lilly (the “**Lilly Affidavit**”). Atrium Health denies that it acknowledged the enforceability or knowledge of any restrictive covenants referenced in paragraph 28 and denies that it intervened in support of SAC’s and AASE’s motion for a temporary restraining order and/or preliminary injunction. Atrium Health moved to intervene in the case independently for the limited purpose of preserving the status quo and preventing the public health crisis caused by SAC’s and AASE’s failures. Atrium Health denies the allegations of paragraph 28 except as expressly admitted.

29. Atrium Health denies the allegations of paragraph 29.

30. Atrium Health admits that the paragraphs referenced in paragraph 30 were contained in the Lilly Affidavit. Atrium denies the allegations of paragraph 30 except as expressly admitted.

31. Atrium Health denies the allegations of paragraph 31.

32. Atrium Health lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 32, and therefore denies those allegations. By way of further response,

SAC and AASE's conduct, which led to the 2017 Action, was the cause of what SAC and AASE described as "a public health crisis in the region." SAC's and AASE's Complaint admits that SAC breached the Atrium Agreement and that such breach was the cause of the public health crisis.

33. Atrium Health denies the allegations of paragraph 33.

34. Atrium Health denies the allegations of paragraph 34.

35. Atrium Health denies the allegations of paragraph 35.

36. Atrium Health admits that it engaged Wherry and Total Anesthesia Solutions to assist in evaluating how anesthesia care is delivered at its facilities. Atrium Health denies the allegations of paragraph 36 except as expressly admitted.

37. Atrium Health denies the allegations of paragraph 37.

38. Atrium Health denies the allegations of paragraph 38.

39. Atrium Health admits that Wherry made a presentation to Plaintiffs' representatives on August 22, 2017, in which Wherry presented information concerning potential anesthesia models that had been demonstrated to be successful in other healthcare systems around the country including some North Carolina facilities. Additionally, Plaintiffs' representatives received additional information and presentation materials and participated in further discussions with Atrium Health concerning Atrium Health's anesthesia model. Atrium Health denies the allegations of paragraph 39, including all subparts, except as expressly admitted.

40. Atrium Health denies the allegations of paragraph 40.

41. Atrium Health denies the allegations of paragraph 41.

42. Atrium Health admits that it held itself out as negotiating, and in fact did negotiate, with SAC in good faith. Atrium Health denies the allegations of paragraph 42 except as expressly admitted.

43. Atrium Health admits that the parties negotiated an extension of the Atrium Agreement. Atrium Health denies the allegations of paragraph 43 except as expressly admitted.

44. Atrium Health admits that the parties agreed to an extension of the Atrium Agreement. Atrium Health denies the allegations of paragraph 44 except as expressly admitted.

45. Atrium Health admits that the parties met to continue to negotiate over a new agreement and that Spencer Lilly (“**Lilly**”) exchanged emails with representatives of SAC related thereto. Atrium Health denies the allegations of paragraph 45 except as expressly admitted.

46. Atrium Health admits that Lilly exchanged emails with representatives of SAC related to discussions of a new agreement. Atrium Health denies the allegations of paragraph 46 except as expressly admitted.

47. Atrium Health admits that Lilly exchanged emails with representatives of SAC related to discussions of a new agreement. Atrium Health denies the allegations of paragraph 47 except as expressly admitted.

48. Atrium Health admits that Lilly exchanged emails with representatives of SAC related to discussions of a new agreement. Atrium Health denies the allegations of paragraph 48 except as expressly admitted.

49. Atrium Health admits that it met with representatives of SAC on January 15, 2018. Atrium Health denies the allegations of paragraph 49 except as expressly admitted.

50. Atrium Health denies the allegations of paragraph 50.

51. Atrium Health denies the allegations of paragraph 51.

52. Atrium Health denies the allegations of paragraph 52.

53. Atrium Health denies the allegations of paragraph 53.

54. Atrium Health admits that Lilly sent an email message to representatives of SAC on February 1, 2018. Atrium Health denies the allegations of paragraph 54 except as expressly admitted.

55. Atrium Health denies the allegations of paragraph 55.

56. Atrium Health denies the allegations of paragraph 56.

57. Atrium Health denies the allegations of paragraph 57.

58. Atrium Health denies the allegations of paragraph 58.

59. Atrium Health denies the allegations of paragraph 59.

60. Atrium Health denies the allegations of paragraph 60 and all subparts thereto.

61. Atrium Health denies the allegations of paragraph 61.

62. Atrium Health denies the allegations of paragraph 62.

63. Atrium Health denies the allegations of paragraph 63.

64. Atrium Health denies the allegations of paragraph 64.

65. Atrium Health admits that, in addition to other statements made in a February 13,

2018 email message from Lilly to Mednax representatives, Lilly stated:

While we are hopeful that Mednax/SAC will join us to find a mutual solution to allow your physicians to continue to practice medicine in their communities, we have observed efforts by Mednax/SAC to try to undermine Atrium's relationships with alternative providers and other business partners. These efforts have included communications from Mednax/SAC that have contained false and misleading information designed to disrupt Atrium's business relationships and which form the basis for legal claims by Atrium against Mednax/SAC. Atrium requests that Mednax/SAC cease and desist from such efforts to disrupt Atrium's business relationships.

Atrium Health denies the allegations of paragraph 65 except as expressly admitted.

66. Atrium Health denies the allegations of paragraph 66.

67. Atrium Health admits that it reports publicly the compensation of its highest paid executives, and the allegations of paragraph 67 are consistent with such reports. Atrium Health denies the allegations of paragraph 67 except as expressly admitted.

68. Atrium Health denies the allegations of paragraph 68.

69. Atrium Health admits that it is a growing healthcare system and undertakes transactions it believes are in its best interests and those of the communities that it serves. Atrium Health denies the allegations of paragraph 69 except as expressly admitted.

70. Atrium Health admits that an actual and justiciable controversy exists by virtue of the Plaintiffs pleading their claims in the Complaint and that Plaintiffs' claims are frivolous and meritless and should be dismissed with prejudice. Atrium Health denies the allegations of paragraph 70 except as expressly admitted.

71. Atrium Health denies the allegations of paragraph 71.

72. Atrium Health admits the allegations of paragraph 72.

73. Atrium Health denies the allegations of paragraph 73.

74. Atrium Health realleges and incorporates by reference its responses set forth in the above paragraphs.

75. Atrium Health admits that it and, for Carolinas HealthCare System Pineville, its subsidiary, Mercy Hospital, Inc., entered into contracts with SAC to provide anesthesia services. Atrium Health denies the allegations of paragraph 75 except as expressly admitted.

76. Atrium Health admits that it and, for Carolinas HealthCare System Pineville, its subsidiary, Mercy Hospital, Inc., entered into contracts with SAC to provide anesthesia services. Atrium Health denies the allegations of paragraph 76 except as expressly admitted.

77. Atrium Health denies the allegations of paragraph 77.

78. Atrium Health denies the allegations of paragraph 78.

79. Atrium Health denies the allegations of paragraph 79.

80. Atrium Health denies the allegations of paragraph 80.

81. Atrium Health denies the allegations of paragraph 81.

82. Atrium Health admits that at least one of the agreements between Atrium Health and SAC contains the language quoted in paragraph 82. Atrium Health denies the allegations of paragraph 82 except as expressly admitted.

83. Atrium Health denies the allegations of paragraph 83.

84. Atrium Health realleges and incorporates by reference its responses set forth in the above paragraphs.

85. The allegations of paragraph 85 constitute legal assertions to which no response is required. To the extent a response is required, Atrium Health denies the allegations of paragraph 85.

86. Atrium Health denies the allegations of paragraph 86.

87. Atrium Health denies the allegations of paragraph 87.

88. Atrium Health denies the allegations of paragraph 88.

89. Atrium Health denies the allegations of paragraph 89.

90. Atrium Health denies the allegations of paragraph 90.

91. Atrium Health realleges and incorporates by reference its responses set forth in the above paragraphs.

92. Atrium Health denies the allegations of paragraph 92.

93. Atrium Health denies the allegations of paragraph 93.

94. Atrium Health denies the allegations of paragraph 94.

95. Atrium Health denies the allegations of paragraph 95.

96. Atrium Health denies the allegations of paragraph 96.

97. Atrium Health denies the allegations of paragraph 97.

98. Atrium Health denies the allegations of paragraph 98.

99. Atrium Health denies the allegations of paragraph 99.

100. Atrium Health denies the allegations of paragraph 100.

101. Atrium Health denies the allegations of paragraph 101.

102. Atrium Health realleges and incorporates by reference its responses set forth in the above paragraphs.

103. Plaintiffs do not allege this claim against Atrium Health. To the extent a response is required, Atrium Health admits it was a party to agreements with SAC to provide anesthesia services at Atrium Health's facilities. Atrium Health denies the allegations of paragraph 103 except as expressly admitted.

104. Plaintiffs do not allege this claim against Atrium Health. To the extent a response is required, Atrium Health lacks sufficient knowledge or information to form a belief as to the allegations of paragraph 104, and therefore denies those allegations.

105. Plaintiffs do not allege this claim against Atrium Health. To the extent a response is required, Atrium Health denies the allegations of paragraph 105.

106. Plaintiffs do not allege this claim against Atrium Health. To the extent a response is required, Atrium Health denies the allegations of paragraph 106.

107. Atrium Health realleges and incorporates by reference its responses set forth in the above paragraphs.

108. Atrium Health denies the allegations of paragraph 108.

109. Atrium Health denies the allegations of paragraph 109.

110. Atrium Health denies the allegations of paragraph 110.

111. Atrium Health denies the allegations of paragraph 111.

112. Atrium Health denies the allegations of paragraph 112.

113. Atrium Health realleges and incorporates by reference its responses set forth in the above paragraphs.

114. Atrium Health denies the allegations of paragraph 114.

115. Atrium Health denies the allegations of paragraph 115.

116. Atrium Health denies the allegations of paragraph 116.

117. Atrium Health realleges and incorporates by reference its responses set forth in the above paragraphs.

118. Atrium Health denies the allegations of paragraph 118.

119. Atrium Health denies the allegations of paragraph 119.

120. Atrium Health denies the allegations of paragraph 120.

121. Atrium Health denies the allegations of paragraph 121.

122. Atrium Health denies the allegations of paragraph 122.

123. Atrium Health denies the allegations of paragraph 123.

124. Atrium Health denies the allegations of paragraph 124.

125. Atrium Health denies the allegations of paragraph 125.

126. Atrium Health admits that it is a party to the case described in paragraph 126.

Atrium Health denies the allegations of paragraph 126 except as expressly admitted.

127. Atrium Health admits that it is a party to the cases described in paragraph 127.

Atrium Health denies the allegations of paragraph 127 except as expressly admitted.

128. Atrium Health denies the allegations of paragraph 128.

129. Atrium Health denies the allegations of paragraph 129.

130. Atrium Health denies the allegations of paragraph 130.

131. Atrium Health denies the allegations of paragraph 131.

132. Atrium Health denies the allegations of paragraph 132.

133. Atrium Health denies the allegations of paragraph 133.

134. Atrium Health realleges and incorporates by reference its responses set forth in the above paragraphs.

135. Atrium Health denies the allegations of paragraph 135.

136. Atrium Health denies the allegations of paragraph 136.

137. Atrium Health denies the allegations of paragraph 137.

138. Atrium Health denies the allegations of paragraph 138.

139. Atrium Health denies the allegations of paragraph 139.

140. Atrium Health denies the allegations of paragraph 140.

141. Atrium Health realleges and incorporates by reference its responses set forth in the above paragraphs.

142. Atrium Health denies the allegations of paragraph 142.

143. Atrium Health denies the allegations of paragraph 143.

SECOND DEFENSE
FAILURE TO STATE A CLAIM

The Complaint fails to state a claim upon which relief may be granted, and therefore should be dismissed pursuant to N.C. R. Civ. P. 12(b)(6).

THIRD DEFENSE
WAIVER AND ESTOPPEL

Plaintiffs' claims are barred by waiver and estoppel by reason of, *inter alia*, Plaintiffs' failure to comply with their obligations, contractual and otherwise, their refusal to negotiate in good faith with Atrium Health, and their conduct, as set forth more fully in the Counterclaims below, which harmed Atrium Health, was intended to unlawfully harm Atrium Health in order to pressure Atrium Health to do business with them and undermine the ability of Scope to meet its obligations under its contract with Atrium Health.

FOURTH DEFENSE
EQUITABLE ESTOPPEL

Plaintiffs' claims and any contractual or other rights they have, and any legal or equitable relief sought by Plaintiffs are barred by the doctrine of equitable estoppel in that the Plaintiffs' misconduct, as set forth more fully in the Counterclaims below, constitutes the false representation and concealment of material facts, intended to induce a reasonably prudent person to believe such conduct was intended or expected to be relied and acted upon, with Plaintiffs having knowledge, actual or constructive of the real facts.

FIFTH DEFENSE
UNCLEAN HANDS

Plaintiffs' claims and any contractual or other rights they have, and any legal or equitable relief sought by Plaintiffs are barred by the doctrine of unclean hands in light of Plaintiffs' misconduct, as set forth more fully in the Counterclaims below.

SIXTH DEFENSE
BAD FAITH

Plaintiffs' claims, including their claim for breach of the implied covenant of good faith and fair dealing, are barred because Plaintiffs acted in bad faith throughout their negotiations with and communications regarding Atrium Health, and their conduct, as set forth more fully in

the Counterclaims below, which harmed Atrium Health, was intended to unlawfully harm Atrium Health in order to pressure Atrium Health to do business with them and undermine the ability of Scope to meet its obligations under its contract with Atrium Health.

SEVENTH DEFENSE
REPUDIATION OF CONTRACT

Plaintiffs' claims for breach of contract are barred by SAC's repudiation and material breach of its agreement with Atrium Health, as set forth more fully in the Counterclaims below.

EIGHTH DEFENSE
AVOIDABLE CONSEQUENCES

Plaintiffs' claims for breach of contract are barred by the doctrine of avoidable consequences, as Plaintiffs had the ability to avoid any and all consequences of the alleged breaches and failed or declined to do so.

NINTH DEFENSE
FAILURE TO MAINTAIN SECRECY/INDEPENDENT DEVELOPMENT

Plaintiffs' claims for misappropriation of trade secrets are barred because the information alleged to be trade secrets referenced in the Complaint was not subject to reasonable efforts by Plaintiffs to maintain its secrecy and is readily ascertainable through independent development or other means.

TENTH DEFENSE
PRIVILEGE

Plaintiffs' claims of tortious interference with contract are denied, but even if such claims were supported in fact, such claims are barred because Defendants at all times acted pursuant to privilege under the common law.

ELEVENTH DEFENSE
CONTRIBUTORY NEGLIGENCE

Plaintiffs' claims for negligent misrepresentation are barred by Plaintiffs' contributory negligence.

TWELFTH DEFENSE
ABSENCE OF CAUSE OF ACTION

Atrium Health is a quasi-municipal corporation and the consumer protection and antitrust laws of Chapter 75 do not create a cause of action against a quasi-municipal corporation. No causes of action purporting to assert antitrust law violations under Chapter 75 against Atrium Health exist and any such claims asserted by Plaintiffs against Atrium Health should be dismissed.

THIRTEENTH DEFENSE
NO ENTITLEMENT TO PUNITIVE DAMAGES

Plaintiffs are barred from recovering punitive damages because Atrium Health did not engage in conduct that was fraudulent, malicious, willful or wanton. Even if Plaintiffs were entitled to recover punitive damages, which is denied, any award of punitive damages is subject to the limitations of N.C. Gen. Stat. § 1D-25(b).

* * *

COUNTERCLAIMS

For its Counterclaims against Plaintiffs, Defendant The Charlotte-Mecklenburg Hospital Authority, which is now known as Atrium Health and, recently also known as Carolinas HealthCare System (“**Atrium Health**”) alleges as follows:

INTRODUCTION TO COUNTERCLAIMS

1. These Counterclaims incorporate by reference the allegations of all of the paragraphs (constituting paragraphs 1-31) of the Amended Introductory Statement and realleges them herein as allegations in these Counterclaims.

2. The Charlotte-Mecklenburg Hospital Authority, known as Atrium Health, is a body corporate and politic that was organized in 1943 under the North Carolina Hospital Authorities Act. It operates, manages, and is affiliated with numerous medical facilities, physician practices, joint ventures and other healthcare services operations. Until recent weeks, Atrium Health did business as Carolinas HealthCare System, and is in the midst of transitioning to its new enterprise name, "Atrium Health." Many Atrium Health facilities continue to operate with the Carolinas HealthCare System name in their title or on signage through the transition to the new name. Atrium Health is synonymous with Carolinas HealthCare System.

3. Atrium Health's facilities include prominent Charlotte institutions such as Carolinas Medical Center, Levine Children's Hospital, and the Sanger Heart and Vascular Institute. Atrium Health's facilities also include full service hospitals located elsewhere in Mecklenburg and surrounding counties, such as Carolinas HealthCare System Pineville, Carolinas HealthCare System Union, Carolinas HealthCare System NorthEast, and Carolinas HealthCare System Cleveland and others elsewhere in North and South Carolina.

4. Atrium Health is the largest public, multi-hospital system in North and South Carolina. Its mission is to improve health, elevate hope and advance healing for all. Embodied in this mission is Atrium Health's commitment to making hospital and health services available to individuals on a cost-effective basis, without regard to the ability of those individuals to pay. These services include twenty-four hour emergency rooms, obstetrics care, trauma care, medical education, and disaster preparedness and response.

5. Plaintiffs and Counterclaim Defendants Mednax Services, SAC, and AASE are subsidiaries and affiliates of and controlled by Mednax, Inc. (“**Mednax**”).⁷ Mednax is a Florida-based, publicly-traded for-profit healthcare company. Mednax has struggled to meet the demands of healthcare systems, its physicians, and most of all—the patients—served in North Carolina.

6. Counterclaim Defendant SAC is the Mednax affiliate that is the party to agreements (the “**Mednax Agreements**”) with Atrium Health pursuant to which Mednax serves as the exclusive provider of services to certain Atrium Health facilities. Counterclaim Defendant AASE is the employer of the physicians that provide services to Atrium Health under the Mednax Agreements. Counterclaim Defendant Mednax Services provides extensive services to SAC and AASE (contract negotiations, human resources, financial services, recruiting, and credentialing of providers). Mednax Services and Mednax, as a practical matter, serve as SAC’s and AASE’s controlling corporate parents.

7. Atrium Health, for the past several years, has demanded that its anesthesiology service providers transition to a different financial model for their relationship with Atrium Health. This model is referred to as a “professional staffing” or “physician lease” model. The model allows Atrium Health to serve as the provider of such services and direct the billing of the professional component of anesthesia services, making it possible for Atrium Health to establish more affordable pricing, and therefore lower surgical costs for patients and other payors.

8. In negotiations over an extension of the Mednax Agreements, Mednax refused to agree to a physician lease model for agreements covering Carolinas Medical Center, Levine

⁷ Although SAC and AASE are distinct legal entities from Mednax Services and Mednax, they are controlled by Mednax. For simplicity, unless otherwise indicated, “**Mednax**” refers to the Florida-based publicly-traded for-profit parent, Mednax, Inc., and to SAC, AASE, and Mednax Services, collectively.

Children's Hospital, and Carolinas Medical Center - Mercy. Mednax also declined to discuss other changes to the Mednax Agreements proposed by Atrium Health that were intended to ensure quality of care, stability in the provision of services, and provide an opportunity to reduce costs and increase access to care.

9. Consequently, Atrium Health decided not to enter new agreements with Mednax. It has instead entered into an agreement (the "**Scope Agreement**") with a new anesthesia services provider, Defendant Scope Anesthesia of North Carolina, PLLC ("**Scope**"). Unlike Mednax, Scope was willing to adopt a physician lease model and willing to agree to other provisions that assure stability in providing anesthesia services and reducing costs.

10. After learning of Atrium Health's decision, Mednax initiated a smear campaign that has and continues to distribute false and misleading information to create fear in the patients that Atrium Health serves. Mednax's purposes are to drive Atrium Health back to the bargaining table, undermine efforts by Scope to recruit physicians, and punish Atrium Health for its decision not to do further business with Mednax.

11. The Complaint Mednax has filed in this case is the most recent feature of this campaign. It propagates many of Mednax's untruths and misleading statements. At the same time, it asserts baseless and frivolous claims against Atrium Health and proposes as its ultimate objective a request that the Court order Atrium Health, through an injunction, to continue to do business with Mednax.

12. These Counterclaims seek to enjoin Mednax from continuing its harmful smear campaign and to recover damages to hold Mednax accountable for its unlawful conduct. These Counterclaims also seek a declaratory judgment that dismisses, with prejudice, the frivolous, meritless claims Mednax tried to assert in its Complaint.

PARTIES, VENUE, AND JURISDICTION

13. Counterclaimant The Charlotte-Mecklenburg Hospital Authority (“**Atrium Health**”) is a body corporate and politic that was organized in 1943 under the North Carolina Hospital Authorities Act. Atrium Health operates healthcare and hospital facilities, with its principal place of business in Charlotte, North Carolina.

14. Counterclaim Defendant Mednax Services, Inc. (“**Mednax Services**”) is a Florida corporation with its principal office in Sunrise, Florida.

15. Counterclaim Defendant Southeast Anesthesiology Consultants, PLLC (“**SAC**”) is a North Carolina professional limited liability company with its principal office in Charlotte, North Carolina.

16. Counterclaim Defendant American Anesthesiology of the Southeast, PLLC (“**AASE**”) is a North Carolina professional limited liability company with its registered office in Raleigh, North Carolina (Mednax Services, SAC, and AASE, collectively “**Mednax**”).

17. This Court has subject matter jurisdiction over this action pursuant to N.C. Gen. Stat. § 7A-240; the amount in controversy in this action exceeds \$25,000, and therefore pursuant to N.C. Gen. Stat. § 7A-243 assignment of this action to the Superior Court division is proper.

18. This Court has personal jurisdiction over Counterclaim Defendants pursuant to N.C. Gen. Stat. § 1-75.4.

SUBSTANTIVE ALLEGATIONS COMMON TO ALL CLAIMS

Mednax’s Acquisition of SAC and Refusal of a Physician Lease Model

19. SAC, previously, was a local anesthesiology practice owned by its physicians.

20. In 2010, Mednax acquired SAC for more than \$200 million. Thereafter, SAC’s physicians became employees instead of owners of SAC, and SAC became owned and controlled by Mednax.

21. At the time of Mednax's acquisition of SAC, SAC was one of two anesthesia groups that held contracts as the provider of anesthesiology services to certain Atrium Health facilities. For anesthesia services, like some other Atrium Health services (such as emergency and pathology services), Atrium Health enters contracts with providers for those services. In each line of service, including anesthesiology, Atrium Health has agreements with multiple providers. When an agreement reaches the end of the term, other practices have an opportunity to take the place of a provider.

22. For anesthesia services contracts, those contracts extended for an agreed upon period that ranged, based on the agreement of the parties, between two and three years. As the end of a contract's term approached, the parties negotiated over whether to enter a new contract or terminate the relationship. In the instances where they agreed to new contracts, the new contracts included different terms that applied to the parties through the end of the new contract's term. In the context of these kinds of contracts, the parties understand that there is no obligation to continue to provide services or to contract for services after the end of a contract's term. It is not uncommon for a new service provider to compete for and win a contract, supplanting an existing provider.

23. As a general matter, the contracts made SAC the exclusive provider of anesthesiology services to the facilities covered by the agreements. In exchange, SAC agreed it would provide sufficient anesthesiology physicians to meet the anesthesiology needs of specified facilities. Moreover, SAC committed to abide by Atrium Health's Statement of Community Service Principles and that the fundamental purpose of the agreements was to enable Atrium Health to adequately meet the needs of the community. In addition, SAC agreed that it and any physicians that provided services under the agreements would abide by applicable state and

federal laws and regulations and applicable professional ethics and standards of conduct, including but not limited to those of the North Carolina Medical Board, the American Medical Association, and the American College of Anesthesia.

24. Under the contracts, the parties anticipated that SAC physicians would serve in leadership roles in the anesthesiology departments at relevant Atrium Health facilities. SAC physicians, in fact, serve as chiefs of facility anesthesiology departments and in other leadership positions and are frequently consulted in the continual development of Atrium Health's anesthesiology program. Accordingly, SAC and its physicians assumed a duty of trust and confidence, and Atrium Health included SAC physicians in numerous Atrium Health decision making processes.

25. In doing so, Atrium Health expected that Mednax would make decisions in the best interests of Atrium Health's patients and would not use the fact that it was the exclusive provider of services for its own pecuniary purposes. Mednax, its physicians, and its affiliates were obligated to refrain from distributing information or making untrue or misleading statements counter to Atrium Health's interests, particularly on the subject of anesthesiology where Mednax was vested authority and assumed duties of trust and confidence to Atrium Health.

26. The current contracts between Atrium Health and SAC (the "**Mednax Agreements**") have the features described in paragraphs 22 through 24.

27. After its acquisition of SAC in 2010, Mednax controlled the negotiations of contracts with Atrium Health and the performance by SAC of its contracts with Atrium Health.

28. In 2013, during discussions about new contracts between Mednax and Atrium Health, Atrium Health expressed its desire to shift all of its facilities to a “professional staffing” model, also referred to as a “physician lease” model.

29. By contrast to previous arrangements, the physician lease model provides that Atrium Health, not Mednax, serves as the provider of such services and directs the billing of the professional component of anesthesia services. This model allows Atrium Health to establish more affordable pricing, which, in turn, results in lower surgical costs for patients and other payors. Since Atrium Health began implementing the physician lease model, patients who received services at Atrium Health facilities under a physician lease model received exactly the same level and quality of care from anesthesiologists, but at lower costs.

30. In negotiations whether to enter new contracts with Mednax in 2014, Mednax refused to agree to a physician lease model.

31. As a result, Atrium Health terminated its agreement with Mednax for Carolinas HealthCare System University and the outpatient department at Carolinas HealthCare System Huntersville, and entered into an agreement with a different provider. The new provider was willing to agree to a physician lease model on terms and conditions similar to those Atrium Health offered to Mednax but which Mednax declined.

32. In 2016, Mednax agreed to a physician lease model in contracts that covered Atrium Health’s facilities Carolinas HealthCare System Lincoln, Carolinas HealthCare System Cleveland, Carolinas HealthCare System Kings Mountain, Carolinas HealthCare System Pineville, and Carolinas HealthCare System Union.

33. Mednax, however, continued in its refusal to agree to a physician lease model for the contract covering Carolinas Medical Center, Levine Children's Hospital, and Carolinas Medical Center - Mercy (collectively these facilities are the "**CMC Facilities**").

34. Even though Atrium Health accepted Mednax's 2016 refusal to implement a physician lease model at the CMC Facilities, it made clear that when the parties negotiated whether to enter new agreements in 2017, it would demand that a physician lease model be the basis for all anesthesia services contracts for its facilities, including the CMC Facilities.

Mednax Demonstrates That It Is an Unstable and Unreliable Service Provider

35. Mednax has struggled to meet the needs of healthcare systems and the physicians it employs in the current healthcare environment. As a publicly-traded, for-profit company, it has shown itself to be preoccupied with increasing its profits instead of providing healthcare of the quality and consistency that its partners demand.

36. As detailed in the Amended Introductory Statement above, in its relationship with Atrium Health, Mednax was willing to put the availability of life-saving Atrium Health services at risk for the sole purpose of trying to squeeze corporate profits from its Charlotte-based physicians.

37. In 2017, during employment agreement negotiations, Mednax refused to offer its physicians acceptable compensation. As a result, a substantial majority of them resigned. When Mednax tried—and failed—to hire qualified replacements, it sued the physicians, alleging that their refusal to agree to compensation Mednax offered was an effort to "extort" money from Mednax.

38. Mednax's lawsuit against the physicians admitted that Mednax breached its obligations to Atrium Health. It further admitted that Mednax's mishandling of negotiations led

to what Mednax itself called “a public health crisis in the region.” Without those physicians, Atrium Health risked interruption of surgical services—including lifesaving trauma, neonatal surgery, and other critical capabilities. As a result, Atrium Health intervened in the case for the limited purpose of asking the court to preserve the status quo between Mednax and its physicians to avert a public health crisis.

39. Additionally, in the past year, a substantial majority of the SAC physicians practicing in both the Charlotte and Greensboro metropolitan areas have filed complaints with the North Carolina Medical Board asserting that SAC’s and Mednax’s business practices violate North Carolina medical ethics rules, and state and federal laws.

40. Moreover, in the past several months, two other major North Carolina medical systems and hospitals have ended their relationships with Mednax. Earlier this year, Duke Raleigh Hospital parted ways with Mednax.

41. Likewise, Cone Health, the largest public healthcare system in the Greensboro area ended its Mednax relationship. In response, Mednax, as it has done to Atrium Health here, filed a spurious lawsuit against Cone Health and also against its former physicians.

Atrium Health Invites SAC to Participate in Anesthesiology Model Discussions

42. In August 2017, Atrium Health invited SAC to participate in meetings and discussions (the “**Anesthesiology Model Discussions**”) with Dr. Thomas Wherry (“**Wherry**”). Dr. Wherry is a consultant that works with health systems to design anesthesiology delivery models to meet system needs.

43. Like other business and policy discussions, the Anesthesiology Model Discussions were to be kept confidential. As part of these discussions, Mednax received copies of PowerPoint presentations, one on August 22, 2017 and another on September 22, 2017, that

provided numerous potential approaches to the delivery of anesthesiology services offered elsewhere in North Carolina and around the country proven to be safe and cost-effective models of care (the “**Presentations**”).

44. Mednax was fully aware that the Presentations were for discussion purposes only and, although Atrium Health intends to examine possible changes to improve efficiency and costs of anesthesiology services, it has not decided to implement any specific approaches contained in the Presentations. To the extent Atrium Health leaders anticipate pursuing options set forth in the Presentations, they will do so with the involvement and approval of facility Medical Staffs and others over a period of months and perhaps years.

Atrium Health Declines to Enter New Agreements with Mednax

45. In October through December 2017, Mednax and Atrium Health negotiated whether to agree to new anesthesia services agreements. Atrium Health again requested that all agreements be based on a physician lease model. Mednax again refused to agree to a physician lease model at the CMC Facilities.

46. In these negotiations, Atrium Health also requested that terms be added to the agreements that were intended to help ensure stability in the provision of anesthesia services. Many proposed terms were designed specifically to prevent a recurrence of the public health crisis Mednax created in July 2017.

47. During these negotiations, Atrium Health and Mednax agreed to extend the Mednax Agreements’ term through June 30, 2018. As part of this extension, Atrium Health agreed it would not negotiate with a different provider of anesthesiology services than Mednax between January 1, 2018 and March 31, 2018 (the “**Restricted Period**”).

48. As negotiations continued, Mednax made clear repeatedly that it would not agree to a physician lease model for the CMC Facilities. Additionally, Mednax ignored Atrium Health's requests that other terms be added to agreements, such as those aimed to ensure stability in Mednax's provision of services.

49. It became clear to Atrium Health that Mednax would not agree to terms important to Atrium Health and its patients in any new agreement.

50. After Mednax's position became clear, in late November 2017, Atrium Health began discussions with Wherry and other providers about the potential to provide anesthesia services as an alternative to Mednax.

51. Atrium Health and Wherry continued discussions and, on December 28, 2017—before the Restricted Period commenced—entered a definitive agreement for an anesthesia provider organized by Wherry to provide anesthesia services after June 30, 2018. Subsequently, Wherry organized Scope Anesthesia of North Carolina, PLLC ("**Scope**"), a North Carolina professional limited liability company, and Scope assumed the obligations of the agreement with Wherry (the "**Scope Agreement**").

52. The Scope Agreement does not dictate that any specific anesthesia options considered in the Anesthesia Model Discussions be implemented.

53. On January 15, 2018, representatives of Atrium Health met with representatives of Mednax. During this meeting, Atrium Health notified Mednax it had decided not to enter new agreements with Mednax. That same day, Atrium Health distributed a memorandum to Atrium Health medical staff and employees notifying them of the decision to end its relationship with Mednax.

Mednax Commences a Disinformation Campaign Distributing False, Misleading and Confidential Information to Harm Atrium Health

54. On February 9, 2018, Mednax broadly distributed a letter via email (the “**February 9 Mednax Letter**”) to physicians, other staff, and entities involved in surgical procedures in Atrium Health facilities (the “**Surgical Staff**”). The Surgical Staff includes physicians in various practices from those involved in transplant, cardiology and neurology procedures, to those in emergency rooms and trauma centers, to those in practices that focus on eye, ears, nose and throat and those involved in plastic surgery.

55. The letter’s authors were Russell Sauder (“**Sauder**”) and Joshua Miller (“**Miller**”), two physicians who serve as corporate officers and representatives of Mednax.

56. Sauder serves as Corporate Medical Director. Notwithstanding Sauder’s role as a corporate officer, Mednax has caused Sauder to join this action as an individual Plaintiff in this case.

57. Miller serves as Division Medical Officer. Miller was one of the Mednax corporate leaders who attempted to squeeze physicians in July 2017 and was instrumental to the near shutdown of Atrium Health facilities. Miller is held in such disrepute by peer physicians that, on information and belief, as part of the resolution of the July 2017 crisis, peer physicians demanded that he be stripped of substantial authority within the organization.

58. Sauder and Miller published the February 9 Mednax Letter on behalf of Mednax and at all pertinent times acted as the agents of Mednax.

59. In publishing the letter, each identified their corporate positions of authority at Mednax.

60. The subject of the letter was “How the Termination of Southeast Anesthesia Consultants Will Impact You.”

61. The purpose of the letter was to distribute false, misleading, and confidential information to impugn the quality of Atrium Health's anesthesiology program to Surgical Staff. In doing so, Surgical Staff would consider terminating or reducing their relationships with Atrium Health, thereby causing Atrium Health financial harm and forcing Atrium Health back to the bargaining table with Mednax.

62. The February 9 Mednax Letter disclosed portions of the Presentations given to Mednax in the Anesthesiology Model Discussions, and described such information as changes to Atrium Health's anesthesia program that Atrium Health had already approved and would be implemented.

63. Mednax's disclosure of this information breached its obligations under the Mednax Agreements to keep this information confidential.

64. Further, however, the February 9 Mednax Letter falsely presented this information to the Surgical Staff. Rather than describe the information as potential options Atrium Health would consider, the letter represented that Atrium Health had already decided to make changes and that those changes would be implemented when the Mednax Agreements concluded.

65. The false statements of the February 9 Mednax Letter (the "**February 9 False Statements**") included the following:

- a. Atrium Health had decided to reduce approximately 30% of full time anesthesiologists throughout Atrium Health's system, and would make reductions at every clinical location serviced by Mednax.

- b. Atrium Health had decided Certified Registered Nurse Anesthetists (“**CRNAs**”) would cover several sites for obstetrics labor and epidural activity without oversight from any anesthesiologist.
- c. Atrium Health had decided to reduce full time physician coverage at Carolinas Medical Center - Mercy.
- d. Atrium Health had decided to reduce full-time physician coverage at Carolinas Medical Center by 32%.
- e. Atrium Health had decided not to include pediatric anesthesiologists in its anesthesiology program, even though that is a critical specialty required to support Levine Children’s Hospital.

66. To underscore the malicious nature of Mednax’s false statements, in one false statement, Mednax falsely portrayed that Atrium Health had decided to convert many clinical locations to CRNA-only locations without any physicians available when it had not. Then, based on this misrepresentation, Mednax cautioned Surgical Staff that “You should educate yourself as to whether this attaches any liability to you.”

67. Moreover, the February 9 Mednax Letter misled Surgical Staff to believe that the letter itself had been sent with the endorsement of all of Mednax’s physicians, when, in fact that was not true.

68. Sauder’s and Miller’s misrepresentations were knowingly false. Miller understood the processes for changes to staffing and care models at Atrium Health and participated in multiple discussions regarding the processes for any such changes. Both Miller and Sauder, as members of the Medical Staff, knew that Atrium Health had not made the decisions they asserted it had and could not have made those decisions until those processes were complete.

69. Discovery will further demonstrate that Sauder's and Miller's misrepresentations were deliberate, willful, wanton, and malicious. For instance, during contract discussions with Mednax, Atrium Health indicated it did not anticipate reducing staffing levels at the CMC Facilities, even though the Presentations outlined options that might have supported doing so. In an October 19, 2017 message from Spencer Lilly, Senior Vice President, and President of the Central Division of Atrium Health, to Miller and his corporate colleagues, Trey Long and Eric Mason, Lilly stated "As a reminder, as we have discussed the proposed MD lease model at CMC/Mercy, we believe using the existing MD staffing levels at those sites would be best." (emphasis added)

70. Sauder's and Miller's statement that Atrium had decided to reduce staffing levels at Carolinas Medical Center by 32% was a deliberate lie.

71. On February 15, 2018, Atrium Health distributed a memorandum to Atrium Health medical staff and employees (the "**February 15 Atrium Memo**"). The February 15 Atrium Memo was intended to mitigate the damage caused by the February 9 False Statements and other statements Mednax had made.

72. The February 15 Atrium Memo explained that Mednax's letter was false and misleading. It included answers to frequently asked questions (FAQs) about the February 9 Mednax Letter which were designed to correct Mednax's false and misleading statements, and invited impacted personnel to call Atrium Health leaders with questions.

73. Mednax, however, issued an additional letter on February 22 (the "**February 22 Mednax Letter**") that undermined Atrium Health's effort to set the record straight. Mednax's new letter, like the first, was sent by Sauder and Miller who both referenced their Mednax

corporate positions. Rather than acknowledge that Mednax's earlier letter contained false statements, the new letter republished them.

74. In particular, the February 22 Mednax Letter stated that the February 9 Mednax Letter "was completely accurate," even though it was not.

75. Furthermore, the February 22 Mednax Letter again misled the Surgical Staff to believe that Atrium Health approved changes to its anesthesiology program described in the February 9 Mednax Letter. The letter continued to falsely portray the Presentations as changes adopted by Atrium Health (the false statements in the February 22 Mednax Letter, the "**February 22 False Statements**").

76. In addition to the defamatory statements above, Mednax has broadly distributed the Presentations and other materials in violation of the confidentiality restrictions of the Mednax Agreements and Mednax's obligations to Atrium Health.

77. Mednax also has directed physicians to selectively disclose portions of the Presentations and make false statements like those in the February 9 and February 22 False Statements. Discovery will identify numerous instances where Mednax representatives have made false statements directly to surgeons, CRNAs, and other hospital and medical staff (the "**Staff False Statements**") in operating rooms and medical facilities for the purpose of harming Atrium Health and its relationships with others in the healthcare community.

78. Since approximately March 21, 2018, Mednax has purchased advertising in print media, radio, billboards, and online media, established a Facebook page, and a website (YourCriticalMoment.com), and started an online petition devoted to further propagating these misrepresentations (the "**Media False Statements**"). The central premise of the Media False

Statements is the same as the February 9 and February 22 False Statements: that Atrium Health has already decided to make changes to its anesthesiology program, even though it has not.

79. For instance, statements on the YourCriticalMoment.com site falsely purport to represent specifics of Atrium Health's adopted model, including assertions that "Anesthesiologists would supervise CRNAs at significantly higher ratios than under the existing medical direction model," that "CRNAs would function alone without anesthesiologist supervision," that the new model "reduc[es] the availability of sub-specialized anesthesiologists," and that "the model calls for a 25% reduction in the number of full-time anesthesiologists."

80. The site even complains that the adopted model was problematic because it was an instance where Atrium Health had "set standards for practicing medicine" instead of allowing "clinicians determining what is best for their patients' care." In truth, Atrium Health has not adopted a new model, and when it does, it will not have done so until approved by the clinicians of the Medical Staff at impacted facilities.

81. Since Atrium Health filed its initial Answer and Counterclaims, Mednax has generated advertisements that further engender fear in patients by falsely stating that services of new and different physicians will diminish patient safety and potentially cause death. For instance, one advertisement claims as its principal message, "Anesthesiologists are being cut out of surgery," even though they are not. In a radio advertisement, Mednax dramatizes a situation where fictitious medical personnel cry "Where is the anesthesiologist? We need the anesthesiologist NOW," preceding a "flatline" sound.

82. Others try to create patient fear of Scope's medical personnel, stating that having new personnel in the operating room might lead to something "go[ing] wrong." Another

emphasizes that “on July 1, your intern won’t be the only new doctor in the operating room.” Yet another radio act depicts a fictional mother searching for a doctor, alleged to be absent, during her child’s surgery.

83. This smear campaign has injured Atrium Health. Among other things, it has and continues to damage Atrium Health’s relationships with Surgical Staff and it has led patients, citing the false and misleading statements and other actions by Mednax, to cancel procedures. It seems likely that other persons who may have come to Atrium Health for healthcare services have sought procedures from alternative providers or not pursued procedures altogether because of Mednax’s unlawful actions.

84. On March 26, 2018, Mednax filed the Complaint in this case. The content of the Complaint reveals it to be nothing more than an extension of the smear campaign described above. It repeats misrepresentations Mednax has made elsewhere and asserts facts that are simply not true. It alleges claims based on an imagined conspiracy, and it makes the preposterous request for the Court, through an injunction, to compel Atrium Health to continue to contract with Mednax indefinitely.

85. Mednax’s claims are a distraction and a disruption to Atrium Health’s ability to provide high quality and affordable healthcare services to the public.

86. This Court should enter injunctive relief to prevent further harm to Atrium Health because of Mednax’s unlawful actions. Further, the Court should enter judgment in favor of Atrium Health on its Counterclaims for damages and other relief against Mednax and enter a declaratory judgment that dismisses with prejudice Mednax’s claims and any others that might have been pled by Mednax, such that Atrium Health can move forward without worry that

Mednax will assert additional, baseless legal claims in its desperate effort to push Atrium Health back to the bargaining table.

FIRST CLAIM FOR RELIEF
BREACH OF THE
MEDNAX AGREEMENTS

87. The allegations of paragraphs 1-86 are incorporated herein by reference.

88. Atrium Health and SAC are parties to the Mednax Agreements.

89. The Mednax Agreements prohibit the distribution of Atrium Health's confidential information.

90. The Mednax Agreements require SAC and any physician providing services thereunder to abide by Atrium Health's Community Service Principles and meet applicable state and federal laws and regulations and applicable professional ethics and standards of conduct.

91. The Presentations and other information disclosed to Counterclaim Defendants as part of the Anesthesiology Model Discussion constitute Atrium Health's confidential information.

92. Counterclaim Defendants, by distributing the Presentations, portions of the Presentations, and other information disclosed to Mednax as part of the Anesthesiology Model Discussions, have caused SAC to materially breach the Mednax Agreements.

93. Counterclaim Defendants, by making false and misleading statements to the Surgical Staff, members of the healthcare community, and the public, including the February 9 False Statements, the February 22 False Statements, the Staff False Statements, and the Media False Statements, the purpose of which was to create unfounded fear in patients and the medical community, to harm Atrium Health, and to improve Counterclaim Defendants' bargaining

position for Counterclaim Defendants' financial gain, caused SAC to materially breach the Mednax Agreements.

94. Such breaches have proximately caused injury to Atrium Health in an amount in excess of \$25,000, which Atrium Health is entitled to recover together with lost profits, and exclusive of interest and costs, for any and all such breaches.

SECOND CLAIM FOR RELIEF
DEFAMATION

95. The allegations of paragraphs 1-94 are incorporated herein by reference.

96. The false and defamatory statements of Mednax, and Sauder, Miller, and other representatives of Mednax on behalf of Mednax, which were published to the Surgical Staff, members of the healthcare community, and the public concerning Atrium Health, include, without limitation:

- a. the February 9 False Statements;
- b. the February 22 False Statements;
- c. the Staff False Statements; and
- d. the Media False Statements.

97. Such statements were made with actual malice.

98. Specifically, such statements were made with knowing falsity, or alternatively, with a reckless disregard for the truth.

99. Upon information and belief, Counterclaim Defendants or their agents on their behalf have with actual malice published other, similarly defamatory statements concerning Atrium Health, the precise nature of which will be determined through discovery in this action.

100. The aforementioned statements by Counterclaim Defendants caused injury to Atrium Health within this State.

101. The aforementioned statements made by Counterclaim Defendants were false, libelous, slanderous, and defamatory statements concerning Atrium Health, which statements were published to third persons.

102. The aforementioned statements made by Counterclaim Defendants were intentionally and maliciously published to third parties.

103. The aforementioned statements made by Counterclaim Defendants constitute defamation and libel per se by impugning Atrium Health in its trade and business.

104. Alternatively, the aforementioned statements made by Counterclaim Defendants constitute defamation and libel per quod, and Atrium Health has and will incur special damages, including damages arising from permanent loss of business relationships, contracts, and lost profits.

105. The aforementioned statements by Counterclaim Defendants proximately caused injury to Atrium Health within this State in an amount in excess of \$25,000, which Atrium Health is entitled to recover of Counterclaim Defendants, jointly and severally, plus punitive damages for any and all such actions.

THIRD CLAIM FOR RELIEF
COMMON LAW UNFAIR COMPETITION

106. The allegations of paragraphs 1-105 are incorporated herein by reference.

107. Counterclaim Defendants, by virtue of the duties of trust and confidence assumed by Mednax as the exclusive provider of anesthesiology services, have a special relationship with Atrium Health, and owe Atrium Health a duty to refrain from disclosing confidential information and making misleading or false statements, or taking actions to instill unfounded fear in patients to harm Atrium Health and abuse the trusted and confidential relationship they assumed.

108. Counterclaim Defendants, by virtue of their status as medical providers, have a special relationship with patients and owe a duty to Atrium Health and others in the medical community to refrain from unethical, unfair, and deceptive conduct intended to could cause fear in patients and damage the ability of other practitioners to serve the medical community.

109. Counterclaim Defendants, by virtue of their status as medical providers, have duties to refrain from engaging in generating unfounded fear in patients as a means to bolster their commercial bargaining positions or to inflict harm on their competitors.

110. Counterclaim Defendants disclosed the Presentations, portions of the Presentations, and other information provided to Mednax as part of the Anesthesiology Model Discussions, knowing such disclosure was prohibited by its obligations to Atrium Health.

111. Counterclaim Defendants made false and misleading statements to the Surgical Staff, members of the healthcare community, and the public, including the February 9 False Statements, the February 22 False Statements, the Staff False Statements, and the Media False Statements which Counterclaim Defendants knew were false and misleading.

112. The purpose of Counterclaim Defendants' conduct described above was to create unfounded fear in patients and the medical community, to harm Atrium Health, and to improve Counterclaim Defendants' bargaining position for Counterclaim Defendants' financial gain.

113. The additional purpose of Counterclaim Defendants' conduct described above was to inflict harm on their competitor Scope.

114. The foregoing conduct reflects the abuse by Counterclaim Defendants of the position of trust and confidence it assumed by seeking to be the exclusive provider of anesthesiology services for Atrium Health and duties they have undertaken as medical providers to the greater medical community.

115. The foregoing conduct by Counterclaim Defendants constitutes unfair conduct as determined by courts of equity.

116. Such unfair conduct damaged Atrium Health's legitimate business interests.

117. Counterclaim Defendants' unfair conduct has directly and proximately caused actual damages to Atrium Health in an amount in excess of \$25,000, which Atrium Health is entitled to recover of Counterclaim Defendants, jointly and severally, plus punitive damages for any and all such actions.

FOURTH CLAIM FOR RELIEF
DECLARATORY JUDGMENT

118. The allegations of paragraphs 1-117 are incorporated herein by reference.

119. Counterclaim Defendants in their Complaint have purported to assert ten claims designed to interfere with and prohibit Atrium Health from ending its relationship with Mednax and from performing its obligations to Scope and Wherry.

120. The claims asserted in the Complaint are lacking in any factual or legal basis.

121. Atrium Health has not breached any agreement with the Counterclaim Defendants, nor has it breached any obligation of good faith owed to the Counterclaim Defendants.

122. Atrium Health has not otherwise taken any action for which Counterclaim Defendants have asserted in the Complaint or which Counterclaim Defendants could have asserted in the Complaint that provides a basis for a claim that would entitle Counterclaim Defendants to legal or equitable relief against Atrium Health.

123. An actual and justiciable controversy exists between Atrium Health and Counterclaim Defendants.

124. Under North Carolina Rule of Civil Procedure 57 and N.C. Gen. Stat. §§ 1-253, 1-254, and 1-533, the Court may enter judgments declaring rights, statuses, and other legal relations.

125. Atrium Health is entitled to a judgment declaring that:

- a. Atrium Health and its affiliates have not breached the Mednax Agreements.
- b. Atrium Health and its affiliates have not breached any covenant of good faith and fair dealing.
- c. Atrium Health and its affiliates have no liability to Counterclaim Defendants or their affiliates for any claims arising out of the transactions or occurrences which are the subject of the Complaint or could have been asserted in the Complaint by Defendants.
- d. The Complaint shall be dismissed with prejudice.
- e. The Counterclaim Defendants have no basis or right to any form of injunctive relief that purports to restrict or restrain Atrium Health or its affiliates from performing the Scope Agreement or purports to require Atrium Health or its affiliates to allow Counterclaim Defendants or their agents to perform medical or other services in Atrium Health facilities.
- f. The Mednax Agreements are terminated effective June 30, 2018, and any rights of Counterclaim Defendants based on the Mednax Agreements shall expire as of June 30, 2018, including any rights to provide medical or other services to Atrium Health, its affiliates, or in their facilities.

126. The value of the rights sought to be established by such declaratory judgment, and therefore the amount in controversy, exceeds \$25,000.

FIFTH CLAIM FOR RELIEF
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

127. The allegations of paragraphs 1-126 are incorporated herein by reference.

128. Through the smear campaign described above, Counterclaim Defendants have and continue to intentionally and maliciously interfere with the relationship between Atrium Health, medical patients and physicians as part of a concerted effort to harm Atrium Health and pressure Atrium Health back to the bargaining table for Counterclaim Defendants' financial gain.

129. Counterclaim Defendants knowingly, intentionally, maliciously, and without privilege, justification, or excuse have and continue to induce patients who would have otherwise obtained medical treatment from Atrium Health to instead seek medical care at other facilities.

130. Counterclaim Defendants knowingly, intentionally, maliciously, and without privilege, justification, or excuse have and continue to induce physicians to transfer patient procedures to facilities other than Atrium Health

131. The purpose of Counterclaim Defendants' smear campaign and efforts is to provoke unfounded fear and confusion among the public, patients and medical personnel, thereby inducing them to cancel scheduled procedures and seek treatment at other hospitals.

132. Counterclaim Defendants' tortious interference directly and proximately will cause and has caused damage to Atrium Health in an amount in excess of \$25,000, which Atrium Health is entitled to recover of Counterclaim Defendants, jointly and severally, plus punitive damages for any and all such actions. In addition, because these damages are irreparable and difficult to quantify, Atrium Health is entitled to an injunction restraining this continued, unlawful activity and smear campaign by Counterclaim Defendants.

PRAYER FOR RELIEF

WHEREFORE, Atrium Health prays that:

A. The Court enter judgment against Plaintiffs and in favor of Atrium Health on all of the claims set forth in the Complaint.

B. The Court enter judgment against Counterclaim Defendant SAC and in favor of Atrium Health on the First Claim for Relief.

C. The Court enter judgment against Counterclaim Defendants and in favor of Atrium Health on the Second, Third, Fourth, and Fifth Claims for Relief.

D. The Court award Atrium Health damages on its Counterclaims in an amount in excess of \$25,000, to be determined at trial, plus interest thereon at the statutory rate.

E. The Court award Atrium Health compensation for any other losses, damages, liabilities, costs, and expenses of any kind or nature whatsoever, including reasonable attorneys' fees, costs and expenses, owing Atrium Health by virtue of the obligations of the Mednax Agreements.

F. The Court award Atrium Health punitive damages for Counterclaim Defendants' malicious and willful or wanton conduct, in an amount to be determined at trial.

G. The Court order a prompt hearing of issues in dispute and advance this action for hearing on the calendar pursuant to its authority under N.C. R. Civ. P. 57.

H. The Court enter a declaratory judgment against Counterclaim Defendants and in favor of Atrium Health as set forth in paragraph 125 above.

I. The Court restrain and enjoin Mednax from its unlawful attempts to interfere with Atrium Health's economic relationships and to cause other irreparable harm to Atrium Health.

J. The Court award Atrium Health the costs of this action.

K. The Court enter such other and further relief as the Court may deem appropriate.

JURY DEMAND

In accordance with Rule 38 of the North Carolina Rules of Civil Procedure, Atrium Health demands trial by jury of all issues so triable.

This 7th day of May, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing was electronically filed on this day using the Business Court's filing system, which will automatically and electronically notify the following counsel of record:

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This 7th day of May, 2018.

s/ Martin L. Brackett, Jr.
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