

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

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SUPERIOR COURT DIVISION  
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MECKLENBURG MULTISPECIALTY  
GROUP, PLLC, JAMES CHESTER MECKLENBURG CO., C.S.,  
ALEXANDER, M.D., DANIEL A. AQUINO,  
M.D., AMIT ARAVAPALLI, M.D., ANDREW  
AVERY, M.D., RUPAL N. BADALYAN,  
M.D., ANNE E. BARNARD, M.D.,  
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EDWARD A. BRADFORD, M.D., OSCAR S.  
BRANN, M.D., DAVID ALLEN BRANTLEY,  
M.D., KERRY PATTERSON BRIONES, M.D.,  
OLGA BROOKS, M.D., ROBERT C.  
BROWNLEE, IV, M.D., GREGORY FRANCIS  
BUSSE, D.O., CATHERINE BRITAIN  
CALLAHAN, M.D., ELAINE LAO  
CAMPBELL, D.O., MARIANNE CARIM,  
M.D., JASON A. CARNES, M.D., WILLIAM  
ERIC CLEMONS, M.D., ALICIA W. COLE,  
M.D., JACOB C. COLEMAN, M.D., DAVID  
M. COLON, M.D., JEFFREY C.  
CONSTANTINE, M.D., PETER N. COPSIS,  
M.D., ALTHEA M. CUNNINGHAM, M.D.,  
MEREDITH L. DASHER, M.D., MICHAEL  
DENSON, M.D., NATASHA DUMRA, D.O.,  
LYNN ECKERT, M.D., WALID RAOUF  
ELTARABOULSI, M.D., CLAIRE A. EVANS,  
M.D., MEREDITH J. FAULKNER, M.D.,  
CHARLES E. FERREE, M.D., CHRISTOPHER  
D. FERRIS, M.D., MAYA D. FETTER, M.D.,  
DAVID J. FRAMM, M.D., MARIA SOCORRO  
GERONIMO, M.D., MELISSA C.  
HENNESSEY, M.D., SISI N. HESTER-  
CLARKE, M.D., KENT C. HOLTZMULLER,  
M.D., CARL ANSEL HUGHES, III, M.D.,  
JENIFER INGLE, M.D., ELIZABETH DEAN  
IWAOKA, M.D., MELISSA A. JAMES, M.D.,  
MARTIE JEWELL, M.D., JAMES B. JONES,  
M.D., CHRISTINA CRABBE KENNELLY,  
M.D., GLENCORA HELENA KHEIREDDINE,  
M.D., KENESHA H. KIRKLAND, M.D.,

VERIFIED COMPLAINT

NICOLE KNIGHT, M.D., EDWARD J. KNISH, JR., M.D., LANNA S. KWON, M.D., ERIC LANDIS, M.D., ADAM LIGLER, M.D., ZUBINA MAWJI, M.D., ANDREA MEMMEN MCGRATH, M.D., JUSTIN B. MILLER, M.D., RICHARD F. MILLER, M.D., UMA NADIMINTI, M.D., KENNETH DALE OWEN, JR., M.D., CAROLINE C. PIERCE, M.D., CLAIRE A. PRESSWOOD, M.D., MAUREEN RAFFERTY, M.D., MOHAMMAD A. RAHMAN, M.D., ALICIA SHUTE REAMS, M.D., UHA REDDY, M.D., ILHEM REMMOUCHE, M.D., WANDA S. ROBINSON, M.D., PATRICIA K. RODDEY, M.D., GARY C. ROLBAND, M.D., GARY RYAN SHELTON, M.D., TERRY SHORT, M.D., KATHLEEN SHORT, M.D., DAVID SCOTT SMITH, M.D., MICHAEL W. SMITH, M.D., NANCY M. SOKANY, M.D., HAROLD L. SPRINGS, III, M.D., MARY WASSELL STOWE, M.D., EHRLICH C. TAN, M.D., ALLEN PATRICK TAURO, M.D., JOHN ANGELO TENINI, M.D., CHARLES T. UPCHURCH, M.D., TEJAL MEHTA VEMURI, M.D., RESHMA CHANGAPPA VORA, M.D., HALA J. WEBSTER, M.D., JULIANNE WEIDNER, M.D., CAROLINE LEE WILDS, M.D. AND JENNIFER WOMACK, M.D.,

PLAINTIFFS,

V.

CAROLINAS PHYSICIANS NETWORK, INC., AND THE CHARLOTTE-MECKLENBURG HOSPITAL AUTHORITY, d/b/a CAROLINAS HEALTHCARE SYSTEM AND d/b/a ATRIUM HEALTH,

DEFENDANTS.

NOW COME Plaintiffs Mecklenburg Multispecialty Group, PLLC (“Mecklenburg Multispecialty”) and physicians James Chester Alexander, M.D., Daniel A. Aquino, M.D., Amit Aravapalli, M.D., Andrew Avery, M.D., Rupal N. Badalyan, M.D., Anne E. Barnard, M.D., Francisco Bautista Vitiello, M.D., Enrico O. Belgrave, M.D., Luis A. Bendezu, II, M.D., April A. Boswell, M.D., Robert C. Bowen, III, M.D., Edward A. Bradford, M.D., Oscar S. Brann, M.D., David Allen Brantley, M.D., Kerry Patterson Briones, M.D., Olga Brooks, M.D., Robert C. Brownlee, IV, M.D., Gregory Francis Busse, D.O., Catherine Brittain Callahan, M.D., Elaine Lao Campbell, D.O., Marianne Carim, M.D., Jason A. Carnes, M.D., William Eric Clemons, M.D., Alicia W. Cole, M.D., Jacob C. Coleman, M.D., David M. Colon, M.D., Jeffrey C. Constantine, M.D., Peter N. Copsis, M.D., Althea M. Cunningham, M.D., Meredith L. Dasher, M.D., Michael Denson, M.D., Natasha Dumra, D.O., Lynn Eckert, M.D., Walid Raouf Eltaraboulsi, M.D., Claire A. Evans, M.D., Meredith J. Faulkner, M.D., Charles E. Ferree, M.D., Christopher D. Ferris, M.D., Maya D. Fetter, M.D., David J. Framm, M.D., Maria Socorro Geronimo, M.D., Melissa C. Hennessey, M.D., Sisi N. Hester-Clarke, M.D., Kent C. Holtzmuller, M.D., Carl Ansel Hughes, III, M.D., Jenifer Ingle, M.D., Elizabeth Dean Iwaoka, M.D., Melissa A. James, M.D., Martie Jewell, M.D., James B. Jones, M.D., Christina Crabbe Kennelly, M.D., Glencora Helena Kheireddine, M.D., Kenesha H. Kirkland, M.D., Nicole Knight, M.D., Edward J. Knish, Jr., M.D., Lanna S. Kwon, M.D., Eric Landis, M.D., Adam Ligler, M.D., Zubina Mawji, M.D., Andrea Memmen McGrath, M.D., Justin B. Miller, M.D., Richard F. Miller, M.D., Uma Nadiminti, M.D., Kenneth Dale Owen, Jr., M.D., Caroline C. Pierce, M.D., Claire A. Presswood, M.D., Maureen Rafferty, M.D., Mohammad A. Rahman, M.D., Alicia Shute Reams, M.D., Uha

Reddy, M.D., Ilhem Remmouche, M.D., Wanda S. Robinson, M.D., Patricia K. Roddey, M.D., Gary C. Rolband, M.D., Gary Ryan Shelton, M.D., Kathleen Short, M.D., Terry Short, M.D., David Scott Smith, M.D., Michael W. Smith, M.D., Nancy M. Sokany, M.D., Harold L. Springs, III, M.D., Mary Wassell Stowe, M.D., Ehrlich C. Tan, M.D., Allen Patrick Tauro, M.D., John Angelo Tenini, M.D., Charles T. Upchurch, M.D., Tejal Mehta Vemuri, M.D., Reshma Changappa Vora, M.D., Hala J. Webster, M.D., Julianne Weidner, M.D., Caroline Lee Wilds, M.D. and Jennifer Womack, M.D., (collectively “Plaintiffs” or “the Physicians”), through counsel, for their Complaint against Defendants Carolinas Physicians Network, Inc. (“CPN”) and The Charlotte-Mecklenburg Hospital Authority, d/b/a at times as Carolinas Healthcare System and d/b/a at times as Atrium Health (“CHS”) (collectively “Defendants” or “Atrium”<sup>1</sup>), and allege and state the following:

### INTRODUCTION

This action is brought to remedy the self-serving monopolistic and anticompetitive actions of Atrium that threaten the ability of more than 90 physicians in the Charlotte community to continue to provide high quality, cost-effective care to thousands of patients as they have done for more than 81 years. The physicians seek to take steps to independently determine care models consistent with the very highest medical standards and to be able to independently negotiate prices, all while independently managing their practice finances and the costs of services that they deliver to their patients. Atrium refuses to allow this result.

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<sup>1</sup> The term “Atrium” herein shall also refer to CHS acting or contracting via or through one of the other Defendants or any or all of them as the context and time periods may require.

In 1936, Dr. James Moses Alexander founded a medical practice in Charlotte. With the addition of other physicians and support personnel, that practice grew into Mecklenburg Medical Group, P.A., which formally organized as a professional association in 1972 and became the largest multi-specialty medical group in Mecklenburg County. After years of operating as an independently owned medical practice, on December 31, 1993, Mecklenburg Medical Group, P.A. was dissolved and its physicians became employees of an Atrium affiliate or subsidiary that continued to use the name Mecklenburg Medical Group or MMG.

Though purporting to be a non-profit institution, Atrium—with its bloated management bureaucracy—has repeatedly complained and contended that it “loses” millions of dollars on the MMG physicians each year. Consequently, the 92 physicians who appear as Plaintiffs in this action (including Dr. James Moses Alexander’s grandson) have decided that they can operate their medical practice more efficiently and, by doing so, better serve their patients by re-forming an independently-owned medical group. Despite their protestations that the Plaintiffs harm Atrium’s bottom line while working as its employees, Atrium refuses to release those physicians from overly broad restrictive covenants that would allow them not to be employed by Atrium (even if such physicians continue to provide referrals to Atrium and services to Atrium patients in Charlotte and the surrounding area) unless Plaintiffs agree never to have arrangements with or the financial assistance of insurance companies or others who might allow Plaintiffs to provide better quality care at lower prices than Atrium.

The restrictive covenants that purportedly bar Plaintiffs from continuing to practice medicine in Charlotte and the surrounding area are far greater than could ever be necessary to protect any legitimate interests of Atrium and violate the public policy of this State by the harm

they would impose on members of the community. Plaintiffs bring this action to obtain a declaratory judgment as to the legal validity and enforceability of those covenants. Specifically, Plaintiffs seek a determination that their actions in re-forming an independent practice are fully within their rights, that the restrictive covenants are invalid and unenforceable, and that Plaintiffs may lawfully continue on an ongoing basis to care for the patients that they and their professional forebears have served for 81 years.

In sum, Atrium is acting as the exact opposite of the non-profit health care provider that it claims to be. Intervention of the Court is required to prevent Atrium's corporate ambitions from causing irreparable harm to the Plaintiff physicians and the thousands of citizens of the Charlotte area that that they serve each year.

#### FACTUAL ALLEGATIONS

1. Plaintiff Mecklenburg Multispecialty is a professional limited liability company organized on or about November 8, 2017 and existing under the laws of the State of North Carolina with an office in Mecklenburg County, North Carolina.
2. Plaintiff J. Chester Alexander, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
3. Plaintiff Daniel A. Aquino, M.D. is a citizen and resident of Union County, North Carolina.
4. Plaintiff Amit Aravapalli, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
5. Plaintiff Andrew Avery, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

6. Plaintiff Rupal N. Badalyan, M.D. is a citizen and resident of Union County, North Carolina.

7. Plaintiff Anne E. Barnard, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

8. Plaintiff Francisco Bautista Vitiello, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

9. Plaintiff Enrico O. Belgrave, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

10. Plaintiff Luis A. Bendezu, II, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

11. Plaintiff April A. Boswell, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

12. Plaintiff Robert C. Bowen, III, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

13. Plaintiff Edward A. Bradford, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

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14. Plaintiff Oscar S. Brann, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

15. Plaintiff David Allen Brantley, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

16. Plaintiff Kerry Patterson Briones, M.D. is a citizen and resident of Union County, North Carolina.

17. Plaintiff Olga Brooks, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

18. Plaintiff Robert C. Brownlee, IV, M.D., is a citizen and resident of Mecklenburg County, North Carolina.

19. Plaintiff Gregory F. Busse, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

20. Plaintiff Catherine Brittain Callahan, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

21. Plaintiff Elaine Lao Campbell, D.O. is a citizen and resident of Catawba County, North Carolina.

22. Plaintiff Marianne Carim, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

23. Plaintiff Jason A. Carnes, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

24. Plaintiff William Eric Clemons, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

25. Plaintiff Alicia W. Cole, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

26. Plaintiff Jacob C. Coleman, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

27. Plaintiff David Manuel Colon, M.D., f/k/a David Manuel Colon-Ruiz, M.D. is a citizen and resident of Lancaster County, South Carolina.



28. Plaintiff Jeffrey C. Constantine, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
29. Plaintiff Peter N. Copsis, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
30. Plaintiff Althea M. Cunningham, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
31. Plaintiff Meredith L. Dasher, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
32. Plaintiff Michael Denson, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
33. Plaintiff Natasha Dumra, D.O. is a citizen and resident of Mecklenburg County, North Carolina.
34. Plaintiff Lynn Eckert, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
35. Plaintiff Walid Raouf Eltaraboulsi, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
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36. Plaintiff Claire A. Evans, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
37. Plaintiff Meredith J. Faulkner, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
38. Plaintiff Charles E. Ferree, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

39. Plaintiff Christopher D. Ferris, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
40. Plaintiff Maya D. Fetter, M.D. is a citizen and resident of Union County, North Carolina.
41. Plaintiff David J. Framm, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
42. Plaintiff Maria Socorro Geronimo, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
43. Plaintiff Melissa C. Hennessey, M.D., f/k/a Melissa C. Palmer, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
44. Plaintiff Sisi N. Hester-Clarke, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
45. Plaintiff Kent C. Holtzmuller, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
46. Plaintiff Carl Ansel Hughes, III, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
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47. Plaintiff Jenifer Ingle, M.D. is a citizen and resident of Cabarrus County, North Carolina.
48. Plaintiff Elizabeth Dean Iwaoka, M.D. is a citizen and resident of Mecklenburg County, North Carolina.
49. Plaintiff Melissa A. James, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

50. Plaintiff Martie Jewell, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

51. Plaintiff James B. Jones, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

52. Plaintiff Christina Crabbe Kennelly, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

53. Plaintiff Glencora Kheireddine, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

54. Plaintiff Kenesha H. Kirkland, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

55. Plaintiff Nicole Knight, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

56. Plaintiff Edward J. Knish, Jr., M.D. is a citizen and resident of Mecklenburg County, North Carolina.

57. Plaintiff Lanna S. Kwon, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

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58. Plaintiff Eric Landis, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

59. Plaintiff Adam Ligler, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

60. Plaintiff Zubina Mawji, M.D. is a citizen and resident of Lancaster County, South Carolina.

61. Plaintiff Andrea Memmen McGrath, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

62. Plaintiff Justin B. Miller, M.D. is a citizen and resident of Union County, North Carolina.

63. Plaintiff Richard F. Miller, M.D. is a citizen and resident of Union County, North Carolina.

64. Plaintiff Uma Nadiminti, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

65. Plaintiff Kenneth Dale Owen, Jr., M.D. is a citizen and resident of Mecklenburg County, North Carolina.

66. Plaintiff Caroline C. Pierce, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

67. Plaintiff Claire A. Presswood, M.D. is a citizen and resident of York County, South Carolina.

68. Plaintiff Maureen Rafferty, M.D. is a citizen and resident of Union County, North Carolina.

69. Plaintiff Mohammad A. Rahman, M.D. is a citizen and resident of Union County, North Carolina.

70. Plaintiff Alicia Shute Reams, M.D. is a citizen and resident of York County, South Carolina.

71. Plaintiff Uha Reddy, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

72. Plaintiff Ilhem Remmouche, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

73. Plaintiff Wanda S. Robinson, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

74. Plaintiff Patricia K. Roddey, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

75. Plaintiff Gary C. Rolband, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

76. Plaintiff Gary Ryan Shelton, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

77. Plaintiff Kathleen Short, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

78. Plaintiff Terry Short, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

79. Plaintiff David Scott Smith, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

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80. Plaintiff Michael W. Smith, M.D. is a citizen and resident of Union County, North Carolina.

81. Plaintiff Nancy M. Sokany, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

82. Plaintiff Harold L. Springs, III, M.D. is a citizen and resident of Lancaster County, South Carolina.

83. Plaintiff Mary Wassell Stowe, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

84. Plaintiff Ehrlich C. Tan, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

85. Plaintiff Allen Patrick Tauro, M.D. is a citizen and resident of Union County, North Carolina.

86. Plaintiff John Angelo Tenini, M.D. is a citizen and resident of York County, South Carolina.

87. Plaintiff Charles T. Upchurch, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

88. Plaintiff Tejal Mehta Vemuri, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

89. Plaintiff Reshma Changappa Vora, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

90. Plaintiff Hala J. Webster, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

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91. Plaintiff Julianne Weidner, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

92. Plaintiff Caroline Lee Wilds, M.D. is a citizen and resident of Union County, North Carolina.

93. Plaintiff Jennifer Womack, M.D. is a citizen and resident of Mecklenburg County, North Carolina.

94. Defendant CPN, at various times doing business as Mecklenburg Medical Group (“MMG”) or Carolinas HealthCare System Medical Group (“CHSMG”), is, upon information and belief, a non-profit corporation organized and existing under the laws of the State of North Carolina with its principal place of business in Mecklenburg County, North Carolina. CPN is owned, directly or indirectly, and is controlled by Defendant Atrium. CPN is a successor by merger of an entity known as Mecklenburg Medical Group, Inc. CPN was recently ranked as the fifteenth largest medical group entity in the United States.

95. Defendant Atrium is a publicly established non-profit hospital authority organized and existing under a statutory enactment of North Carolina law with its principal place of business in Mecklenburg County, North Carolina. It recently adopted the new trade name “Atrium” to assist in its business branding as it branches into other states. It is the largest hospital system in the Charlotte area region and has substantial power and control in the relevant market for medical services. Atrium provides medical services through more than 12 million patient encounters every year, and CPN is the primary provider to Atrium of professional physician services to that patient base.

96. Each of the Physicians is a physician duly licensed in North Carolina and in good standing with the North Carolina Medical Board.

#### The Physicians’ Employment with Atrium

97. Plaintiffs reallege the above allegations and the same are incorporated by reference as if fully set forth herein.

98. The Physicians are all employees of Atrium within CPN’s medical practice, which as noted above has retained the trade name of “Mecklenburg Medical Group” or “MMG.”

Beginning with the outset of their employment, each of the Physicians executed a written employment agreement with Atrium setting out the terms of their employment, certain of which agreements were amended and/or restated from time to time and were in effect through December 31, 2017 (“the Existing Employment Agreements”).

99. The Existing Employment Agreements contain language that provides that the Agreements renew automatically each year unless earlier terminated.

100. The Existing Employment Agreements typically contain language relating to how such Agreements might be terminated. Such provisions allow for either party to terminate “without cause” upon providing advance written notice to the other party. A party may also terminate where there is a material breach by the other party that is not cured on a timely basis. Atrium is also permitted to terminate the Agreements “for cause” under certain specific circumstances, such as a Physician’s violation of the Professional and Personal Conduct policy of CPN, a Physician’s failure to meet certain clinical or privilege qualification standards or where a Physician otherwise fails to comply with required warranties or representations.

101. As noted above, each of the Existing Employment Agreements also contains restrictive covenant provisions demanded by Atrium (the “Restrictive Covenants”) that purport to apply under certain circumstances upon termination of a Physician’s employment. Typically, such Restrictive Covenants broadly prohibit the Physicians from operating a medical office, clinic, or outpatient treatment facility or otherwise engaging in *any* practice of “medicine” within a fifteen (15) mile radius of certain CPN offices for a period of twelve or eighteen months following termination of the Existing Employment Agreements.



102. In other words, the Restrictive Covenants prevent the Physicians from performing specialty work in the region that is totally different and distinct than the work they performed as employees of Atrium, from working as a non-physician manager of a practice, and even from performing charity physician work in the area.

103. Consequently, the Employment Agreements typically provide for a purported “Noncompetition Period”—and thus a purported non-compete restriction (“the “Existing Non-Compete Provision”)—only if (1) a Physician terminates the agreement “without cause,” (2) Atrium terminates the Physician “for cause,” or (3) if Atrium breaches the Agreement but such breach is timely cured.

104. If Atrium terminates a Physician’s employment without cause, the Existing Non-Compete Provision has no application to the Physician’s post-termination employment activities.

105. A few of the Plaintiffs are under contract provisions in their particular Existing Employment Agreements that provide that the Existing Non-Compete Provision has expired as of the date of the filing of this Complaint. If this Provision were somehow deemed applicable or enforceable, the vast majority of Plaintiffs would remain bound by such purported Covenant.

106. ~~None of the Plaintiffs has engaged in any acts or omissions that would permit Atrium to terminate them for cause.~~

107. The vast majority of the Existing Employment Agreements also contain a non-solicitation provision (“the Existing Non-Solicitation Provision”) that purports to bar a Physician, after termination of his or her employment, from directly contacting or communicating with or specifically targeting a person for the purpose or with the result of providing services to such person, and includes contacts or communications made through or

arranged through another person (either directly or indirectly). The Existing Non-Solicitation Provision further purports to restrict a Physician, for a twelve-month period, from soliciting any Atrium patients who reside within the geographical area as set forth in the Restrictive Covenant and who have consulted with, been treated by or cared for by the Physician within the twelve-month period immediately preceding the termination. This means that upon departure from employment by CHS, the Physicians could not notify their patients of the change and invite them to continue receiving services from the Physicians.

The Invalidity of the Existing Non-Compete  
and Existing Non-Solicitation Provisions

108. Plaintiffs reallege the above allegations and the same are incorporated by reference as if fully set forth herein.

109. In early 2017, Atrium decided unilaterally to alter certain terms under which the Physicians were employed beginning January 1, 2018, specifically including the amount of compensation that a Physician would earn.

110. As part of its plan to materially change the terms under which the Physicians were employed, Atrium presented the Physicians with proposed new employment agreements (the “Proposed New Agreements”).

111. In meetings in the spring and summer of 2017, several of the Physicians, who were meeting with Atrium on behalf of all Plaintiffs, were notified by Atrium agents that, as to any of the Physicians who did not execute the Proposed New Agreements, the employment of each such Physician was to be terminated “for cause” by Atrium under the Existing Employment Agreements, effective January 1, 2018.

112. The basis for termination of the Existing Employment Agreements given by Atrium at that time—namely a decision by a Physician not to sign the Proposed New Agreement—could not properly be an event that can form the basis of a “for cause” termination under the Existing Employment Agreements or under applicable law.

113. As a result, such notification of termination of the Physicians by Atrium was actually a termination “without cause” under the terms of the Existing Employment Agreements. Such termination therefore relieves the Physicians of any of the purported restrictions of the Existing Non-Compete Provisions, effective January 1, 2018.

114. Even as to any of the Physicians who might not be bound by such purported Existing Non-Compete Provisions as of the date of filing of this Complaint, a purported “for cause” termination, even if false, would irreparably impugn and damage the reputation and present and future livelihood of each such Physician.

115. In addition, even if the wrongful “for cause” termination of Physicians were somehow deemed otherwise proper, the Existing Restrictive Covenants are invalid as a matter of law. Atrium has no legitimate interest in the enforcement of the Existing Non-Compete Provisions.

116. On numerous occasions, Atrium has represented to various of the Physicians that Atrium was losing millions of dollars annually on their medical practice. Most recently, Atrium represented that it was budgeting a loss resulting from Plaintiffs’ medical practice of approximately \$17.6 million dollars in 2018.

117. In negotiations for their withdrawal from employment by Atrium, Plaintiffs have offered to continue to use the facilities and equipment owned by Atrium which they presently utilize in serving patients by leasing them on a fair market basis.

118. Atrium has no legitimate business interest in the Plaintiffs' obligation under the Existing Employment Agreements to refer their patients to Atrium's facilities. Under 42 U.S.C. §1395nn (the "Stark Law"), a hospital cannot make payments to physicians for referring their patients to the hospital. The hospital may pay employee physicians for identified services provided to the hospital so long as the payment is at fair market value for those services and does not depend on any referrals from the physician to the hospital. Thus, if Atrium's only business interest in the enforcement of the Existing Non-Compete Provisions is to secure the continued referral of Plaintiffs' patients to Atrium's facilities, those provisions violate the public policy of the United States and are therefore void, unenforceable, invalid and of no force and effect.

119. Even if Atrium had a legitimate business interest in the enforcement of the Existing Non-Compete Provisions those provisions are overly broad in scope. Upon information and belief, Atrium has waived or modified the Existing Non-Compete Provisions of the employment agreements of other similarly situated physicians employed by Atrium.

120. In negotiations as noted above, the Existing Non-Compete Provisions purport to prevent a Physician, after termination of employment with Atrium, from "*operating* a medical office, clinic or outpatient treatment facility, *or otherwise engaging in the practice of medicine.*" (Emphasis added).

121. Further, the prohibition against any "operation" of a medical practice—which would include, for example, a Physician acting only as a business manager, administrator or in

a capacity unrelated to the provision of medical services as a licensed physician—is overly broad, broader than reasonably necessary to protect the legitimate business interests of Atrium, and otherwise renders the Existing Non-Compete Provision unenforceable.

122. The prohibition against “otherwise engaging in the practice of medicine” would include, for example, a Physician practicing medicine in a specialty or manner wholly unrelated to those services that the Physician performed for Atrium, or practicing medicine for patients with whom the Physician had no contact during his or her employment with Atrium. This prohibition also would prevent a Physician from engaging in volunteer or charity medical care in the area.

123. For example, the Existing Non-Compete Provisions would prevent a Physician from volunteering his or her medical services at the Matthews Free Medical Clinic in Matthews, the Lake Norman Community Health Clinic in Huntersville, or the Charlotte Community Health Clinic—notwithstanding the fact that such service would in no way harm any legitimate business interest of Atrium.

124. Consequently, the provision is overly broad, broader than reasonably necessary to protect any possible legitimate business interests of Atrium, and otherwise renders the Existing Non-Compete Provision unenforceable.

125. Atrium has enacted a number of changes to patient care models that are detrimental to the community and to the Physicians’ ability to adhere to their ethical and medical duties. For example, originally under what Atrium shamelessly called a “care *re-design*,” Atrium cut the number of assisting registered nurses supporting the Physicians in their clinical work. Atrium also took all “triage” nurses (who help with initial assessment of patients with

possible emergencies) out of the practice facilities entirely and warehoused them in a central building in Mint Hill, North Carolina.

126. Further, MMG physicians and patients have long depended on there being a staff member physically present in each practice office to answer incoming phone calls from patients. By being locally present, such staff members can move quickly to walk down the hall to find the physician when a patient calls in with an urgent need. Atrium decided it was in its best interest to abolish this long-standing arrangement: It replaced those local positions with a centralized telephone call center, also in Mint Hill.

127. Enforcement of such covenants in the Existing Employment Agreements or in the Proposed New Agreements, and/or requiring the Physicians to continue work for Atrium, would require and cause Plaintiffs to be parties to and complicit in the anticompetitive and illegal conduct of Atrium described herein, specifically including the risky changes to care models that Atrium has enacted, the actions of Defendants that are the subject of the Department of Justice Suit and class actions described below, thus preventing Plaintiffs from serving their patients in the most cost effective manner as required by their ethical requirements and duties.

128. The illegal and improper conduct of Atrium described hereinabove and in the civil actions referenced herein, as well as the contract breaches described herein, further relieve the Physicians of any obligation or duty to comply with the Existing Non-Compete or Existing Non-Solicitation Provisions of the Existing Employment Agreements.

129. Further, enforcement of either the Existing Non-Compete Provision and/or the Existing Non-Solicitation Provision in the Existing Employment Agreements would unduly interfere with the rights of patients to continuity of care and their choice of medical providers,

would cause Atrium-manufactured shortages of needed medical providers in the Charlotte area, and would result in a public health crisis. As such, the Restrictive Covenants violate the public policy of this State and position statements of the North Carolina Medical Board, and are therefore void, unenforceable, invalid, and of no force or effect.

130. The North Carolina Medical Board, which has the authority to regulate the practice of medicine in this State pursuant to North Carolina Law, has issued the following position statement regarding patient choice.

### **Permit Patient Choice**

It is the patient's decision from whom to receive care. Therefore, it is the responsibility of all practitioners and other parties that may be involved to ensure that:

- Patients are notified in a timely fashion of changes in the practice and given the opportunity to seek other medical care, sufficiently far in advance (at least 30 days) to allow other medical care to be secured, which is often done by newspaper advertisement and by letters to patients currently under care;
- Patients clearly understand that they have a choice of health care providers;
- Patients are told how to reach any practitioner(s) remaining in practice, and when specifically requested, are told how to contact departing practitioners; and
- Patients are told how to obtain copies of or transfer their medical records.

No practitioner, group of practitioners, or other parties involved should interfere with the fulfillment of these obligations, nor should practitioners put themselves in a position where they cannot be assured these obligations can be met.

131. Enforcement of the Non-Solicitation Provisions of the Existing Agreements would cause Plaintiffs to violate the foregoing position statement of the North Carolina Medical Board. As such, the Non-Solicitation Provisions of the Existing Employment Agreements violate the public policy of this State, and are therefore void, unenforceable, invalid, and of no force or effect.

#### The Invalidity of the Proposed New Agreements

132. Plaintiffs reallege the above allegations and the same are incorporated by reference as if fully set forth herein.

133. Eight of the Physician Plaintiffs were induced by duress, fear, lack of meaningful choice, and the threats of Atrium to end their livelihoods in the community (and harm their reputations by asserting they were terminated “for cause”) to execute the Proposed New Agreements, which purported to take effect after such Physicians’ Existing Employment Agreement expired on December 31, 2017. However, the Proposed New Agreements do not provide any new or additional value or consideration to the Physicians for their continued employment with Atrium. In fact, the amount of compensation under the Proposed New Agreements is lower than under the Existing Employment Agreements even though the restricted geographical territory is twice as large (30 mile radius).

134. In an email dated July 19, 2017, Mr. Jeffrey A. Ozmon, acting on behalf of Atrium, admitted the following:

You are correct the new standard contract will have a non-compete and there in [sic] no additional compensation attached to signing that contract (ie signing bonus).



135. Thus the Proposed New Agreements—including without limitation any purported Restrictive Covenants—are inapplicable and/or void, unenforceable, invalid, and of no force or effect as a result of the lack of any valuable consideration being offered by Atrium.<sup>2</sup>

136. The Proposed New Agreements, even if executed by a Physician, are otherwise not valid or effective to cause changes in the compensation of the Physicians according to the terms and conditions of the Existing Employment Agreements and other policies or agreements governing such changes or alterations: Atrium failed to adhere to the required procedures for review and approval by the MMG Governance Council as it applies to changes in the allocation or administration of physician compensation.

137. Moreover, the scope of the non-compete and non-solicitation provisions in the Proposed New Agreements contain substantially the same language and Restrictive Covenants terms as in the Existing Employment Agreements, generally restrict the Physicians from practicing in an even greater geography and are therefore are void, unenforceable, invalid, and of no force or effect.

138. In addition, the illegal conduct of Atrium described hereinabove and in the civil actions referenced herein, as well as the contract breaches described herein, further relieve the Physician Plaintiffs of any obligation or duty to comply with the non-compete and non-solicitation provisions in the Proposed New Agreements.

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<sup>2</sup> Further, the lower compensation given to such Physicians' for any work they performed after January 1, 2018 would be in breach of the Existing Employment Agreements and such breach thus relieved such Physician of any obligations under the purported Restrictive Covenants therein.

FIRST CAUSE OF ACTION  
(MONOPOLIZATION/ATTEMPTED MONOPOLIZATION)

139. Plaintiffs reallege the above allegations and the same are incorporated by reference as if fully set forth herein.

140. The Physicians provide for CHS patients a variety of necessary medical services in several specialties and/or subspecialties, including internal medicine, gastroenterology, endocrinology, dermatology, hepatology, pulmonology, sleep medicine, and cardiology (the “Relevant Services”). Atrium, via the use of the Physicians and otherwise, controls at least fifty (50) percent of the market for provision of the Relevant Services as part of general acute care inpatient hospital medical care in the Charlotte area. As referenced herein, the term “Charlotte area” or “Market” means that relevant geographic market of the Charlotte Combined Statistical Area, as defined by the U.S. Office of Management and Budget, which consists of Cabarrus, Cleveland, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, Stanly, and Union Counties in North Carolina, and Chester, Lancaster, and York counties in South Carolina.

141. As recently as 2016, Atrium had approximately \$9.7 billion in annual revenue, more than double that of Novant Health, its largest competitor. From 2011 to 2015, Atrium increased its number of care locations by over fifty percent, from around 600 to over 900, largely through acquisitions. Carolinas Medical Center, Atrium’s flagship local hospital, which is located in and serves the Charlotte area, boasts having more than 1,100 local physicians on staff, whereas its major competitor Novant Health Presbyterian Medical Center, also located in the Charlotte area, has only 700 physicians on its staff (thus Atrium utilizes more than sixty percent of physicians with local medical center privileges).

142. Atrium dominates not only the Charlotte area for Relevant Services overall but has equal or even greater market power and dominance in certain specialties and sub-specialties represented by Plaintiffs within the Charlotte area. For example, Atrium employs or controls the services of at least approximately seventy (70) percent of Charlotte area cardiologists, endocrinologists, pulmonary and sleep specialists (hereinafter collectively the “Dominated Specialty Market”).

143. Atrium exerts market power in its dealings in both the Market and the Dominated Specialty Market with medical providers and the patient population in the Charlotte area. Sufficient barriers to entry or expansion exist in both the Market and the Dominated Specialty Market such as capital costs, training, licensing, credentialing, and education of providers, as well as regulatory restrictions at the state and federal level. Competitors in the Market and Dominated Specialty Market lack the capacity to increase their output of competitive services in the near term. Upon information and belief, Atrium uses its market power in the Market and the Dominated Specialty Market in a manner that permits it to demand payor reimbursement rates in the Charlotte area that are up to 150 percent more for services than those obtained by other Charlotte area hospitals for the same services, despite the fact that Atrium insisted on lowering compensation beginning in 2018 for the Physicians.

144. Atrium’s market power allows it to demand favorable provisions from insurers for services such as those provided by the Physicians as employees of Atrium, at a steep cost to competitors and consumers. The United States Department of Justice Antitrust Division is currently suing Atrium, in an action in the United States District Court for the Western District of North Carolina, Case No. 3:16cv00311 (the “Department of Justice Suit”), because Atrium

has unlawfully exercised its market dominance to force commercial insurance companies to agree not to “steer” patients to lower cost and higher quality providers.

145. Atrium also has been sued in the Superior Court of Mecklenburg County in a proposed class action matter entitled *DiCesare v. The Charlotte-Mecklenburg Hospital Authority*, Case No. 16-CVS-16404 (the “Mecklenburg Class Action”). The pleadings in such action assert that Atrium’s contractual activities with insurance companies reduce competition in the Charlotte area and increase the price of healthcare services. The North Carolina Business Court recently issued an order refusing to dismiss the claims because of allegations as to Atrium’s market power based on the facts set forth in the class action complaint. More recently, Atrium was sued in the United States District Court for the Western District of North Carolina in another proposed class action entitled *Benetez v. The Charlotte-Mecklenburg Hospital Authority et al.*, Case No. 3:18-vs-00095-RJC-DCK (the “W.D.N.C. Class Action”). The pleadings in such action assert that CHS violated the Sherman Antitrust Act by restricting insurance companies from referring, or “steering,” to less-expensive healthcare services than those controlled by Atrium, or from offering patients information and financial benefits to use less-expensive healthcare services by Atrium’s’ competitors.

146. Upon information and belief, Atrium in fact has or does impose such contractual restrictions on insurance companies as asserted in the Department of Justice Suit, the Mecklenburg Class Action, and in the W.D.N.C. Class Action.

147. The calculated and intentional demands and actions of Atrium against Plaintiffs as described herein demonstrate they have further engaged in predatory and anti-competitive

conduct with a specific intent to monopolize the Market and the Dominated Specialty Market, and they have a dangerous probability of achieving monopoly power.<sup>3</sup>

148. The anticompetitive harm caused by Defendant's actions is exacerbated by the fact that in the Atrium employment agreements, Atrium expressly mandates that Plaintiffs, with very limited exceptions, refer each and every patient in need of hospitalization, diagnosis or treatment on an outpatient or inpatient basis to an Atrium owned, operated or managed facility or to a member of the medical staff of Atrium's hospitals, without any provision for Plaintiffs to personally consider the pricing or cost to the patient of such referral or the patient's choice.

149. Atrium's actions and attempted actions against Plaintiffs and the contract provisions imposed by Atrium, as described herein, are injurious to competition and consumer welfare in the Charlotte area, and raise or will raise prices for physician services provided to the public.

150. The actions of Defendants described herein therefore constitute illegal monopolization and/or attempted monopolization of the relevant market in violation of N.C.G.S. § 75-2.1.

151. As a result, Plaintiffs have been damaged in an amount in excess of \$25,000 and are entitled to recover same from Defendants. Pursuant to N.C.G.S. §§ 75-16 and 75-16.1 and other applicable law, Plaintiffs are entitled to have such damages trebled and to an award of costs and reasonable attorney's fees.

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<sup>3</sup> In a further attempt to expand its economic power, Atrium announced in 2017 an intended combination with UNC Health Care to create a medical business behemoth with annual revenues of more than \$13 billion. On or about March 2, 2018, Atrium announced it would not go through with the deal; a principal reason for Atrium's refusal was its inability to guarantee that it would have control over the finances and operations of the new entity.

SECOND CAUSE OF ACTION  
(COMMON LAW UNFAIR COMPETITION)

152. Plaintiffs reallege the allegations set forth in the above paragraphs and the same are incorporated by reference as if fully set forth herein.

153. Atrium has engaged in coercive, unfair, and unscrupulous commercial tactics, including imposition of the unreasonable conditions on practice independence described herein, calculated to prevent Plaintiffs from operating independently in a manner that would lower the costs of medical care to members of the community and/or prevent shortages of physicians in the community, all in order to inflict economic harm on Plaintiffs and the public and in order to restrain trade solely to enrich Atrium's coffers and to prevent price or other competition in the marketplace.

154. During multiple communications prior to the institution of this action, Atrium purportedly indicated a willingness to consider allowing the Physicians to operate independently but with the cooperation of Atrium, including possible property leasing and/or equipment transfers by Atrium. Such purported willingness initially appeared to the Physicians to be genuine and, as a result of such inducement and in reliance on such communications, Physicians reasonably delayed undertaking the steps necessary to establish their own facilities, with appropriate equipment and staffing, in order to provide the community with uninterrupted services.

155. However, shortly before institution of this action, without prior notice, the Physicians learned that, among other things, Atrium would only permit the requested change in the parties' relationship on the following conditions:

- a. That the independent practice or any related practice management service organizations could never affiliate in any way with payors, other hospitals, or outside investors, regardless of the reason or need;
- b. That the independent practice must in the future share all its financial records openly with Atrium;
- c. That the independent practice could never use the name “Mecklenburg Medical Group” or “MMG” but would nevertheless have to pay for Atrium’s perceived value of the name and goodwill of Mecklenburg Medical Group or MMG;
- d. That the independent practice would be required, should its ownership ever change, to provide Atrium with a right of first refusal on any purchase; and
- e. That the independent practice, as stated to representatives of the Physicians by an officer of Atrium, could never take any action, or form any relationship with third parties, that Atrium viewed as a “threat.”

156. In other words, Atrium has now made it clear that the only “independent” practice that it would permit is one that is effectively not independent at all.

157. In actuality, Atrium never intended to voluntarily permit any independent practice by the Physicians and hid the above conditions from the Physicians in order to induce delay on the part of the Physicians in preparing to serve the public outside of employment in the illegal and anticompetitive structure of Atrium.

158. As a result of Atrium’s actions in this regard, the Physicians stand, on a mere ninety days’ notice, to lose their ability to serve the patients in the community.

159. These tactics of Defendants, as well as those acts set forth otherwise herein, constitute unfair competition, and Defendants’ actions have proximately injured and damaged Plaintiffs and will continue to proximately injure and damage Plaintiffs—as well as the public. Such conduct entitles Plaintiffs to a judgment of compensatory damages in an amount in excess of \$25,000 together with consequential and incidental damages, pre- and post-judgment interest

and costs as provided by law, as well as punitive damages for Defendants' willful, wanton, and malicious conduct, which was undertaken in order to punish and inflict monetary harm on Plaintiffs and the public.

**THIRD CAUSE OF ACTION**  
**(Declaratory Judgment)**

160. Plaintiffs reallege the above allegations and the same are incorporated by reference as if fully set forth herein.

161. There now exists between the Physicians and Atrium an actual, real and justiciable controversy concerning the effect of the previous "for cause" termination communications, the enforceability of the Existing Non-Compete Provision, the Existing Non-Solicitation Provisions, the entire New Proposed Agreements and the non-compete and non-solicitation provisions contained therein, the ability of Atrium to terminate the employment of the Physicians, the ability of the Physicians to form an independent medical practice, and litigation concerning the same is unavoidable and inevitable.

162. Consequently, pursuant to N.C.G.S. § 1-253 *et seq.*, N.C. R. Civ. P. 57, or other applicable law, Physician Plaintiffs are entitled to a declaratory judgment that they cannot be terminated "for cause" for not executing any new contracts with Atrium; that, in light of the delays induced by Atrium as described above, they cannot be terminated for any reason other than good cause during the time that they transition to an independent medical practice; that the Existing Restrictive Covenants inclusive of the Non-Compete Provision and Non-Solicitation Provisions are inapplicable and/or void, unenforceable, invalid, and of no force or effect because they are overly broad as to scope, illegal, against public policy and are otherwise void, unenforceable, invalid and of no force or effect; that the New Proposed Agreements are void,



unenforceable, invalid, and of no force or effect because of a lack of consideration or otherwise; and that the non-compete and non-solicitation provisions of all aforementioned Agreements are overly broad as to scope, illegal, against public policy and are otherwise void, unenforceable, invalid, and of no force or effect.

**FOURTH CAUSE OF ACTION**  
**(Breach of Contract/Wage and Hour Act)**

163. Plaintiffs reallege the above allegations and the same are incorporated by reference as if fully set forth herein.

164. The Physicians, and each of them, had valid contracts with CPN via the Existing Employment Agreements.

165. Under such Agreements, CPN was required to share certain "Practice Total Net Revenue" (the "Revenues") with the Physicians. Such Revenues included certain gross charges less certain adjustments, as well as "all other revenues that Practice receives for provision of professional services."

166. Upon information and belief, for some years, CPN has contracted with one or more payors under agreements that included performance incentive payments to CPN (including without limitation payments for achieving certain rates of generic prescribing, ER admissions, and advanced imaging utilization).

167. Such payments should have been included in the Revenues required to be shared with the Physicians.

168. Upon information and belief, CPN has received substantial payments from such payor(s). However, such payments have not been shared with the Physicians as required under the Existing Employment Agreements.

169. CPN's failure to share such payments with the Physicians is a breach of the Existing Employment Agreements. Further, CPN failed to continue, after January 1, 2018, to pay agreed-upon wages to the Physicians, which also breached such Agreements. These breaches also constitute a violation of the North Carolina Wage and Hour Act, N.C.G.S. § 95-25.6.

170. In addition, Atrium breached its obligations to the Physicians by failing to follow the required procedures of the MMG Governance Council when it separated certain subspecialty practices from the remainder of the MMG group without proper approval. Further, as noted above, Atrium further failed to adhere to the required procedures for review and approval by the MMG Governance Council as it applies to changes in the allocation or administration of physician compensation.

171. All conditions precedent to the bringing of this claim have occurred, been satisfied or have been waived.

172. As a proximate result of CPN's breaches of contract, the Physicians, and each of them, has been damaged and are entitled to recover an amount in excess of \$25,000 together with pre- and post-judgment interest and costs as provided by law. In addition, pursuant to N.C.G.S. § 95-25.22(a) and (a1), as a proximate result of CPN's violation of the North Carolina Wage and Hour Act, the Physicians, and each of them, are further entitled to additional, liquidated damages in an amount equal to the unpaid wages and interest in excess of \$25,000 awarded, together with costs and an award of reasonable attorneys' fees in accordance with N.C.G. S. § 95-25.22(d).

**RESERVATION OF RIGHTS**  
**(For Injunctive Relief)**

Plaintiffs hereby reserve all rights to seek appropriate injunctive relief as needed pursuant to Rule 65 of the North Carolina Rules of Civil Procedure and N.C.G.S. § 1-485 and other applicable law, in order to preserve the status quo of the Physicians' current employment status to account for the delays induced by Atrium as described above and to prevent irreparable harm to the Plaintiffs and to the public, pending resolution of this matter.

WHEREFORE, Plaintiffs respectfully pray the Court as follows:

1. For an award of damages in favor of Plaintiffs and against Defendants in an amount in excess of \$25,000, together with pre- and post-judgment interest;
2. For an award of additional, liquidated damages in an amount equal to the unpaid wages and interest in excess of \$25,000 awarded for breach of contract, together with costs and an award of reasonable attorneys' fees in accordance with the North Carolina Wage and Hour Act;
3. For an award of treble damages pursuant to N.C.G.S § 75-16;
4. For an award of punitive damages;
5. That this Court, pursuant to N.C.G.S. § 1-253 *et seq.*, N.C. R. Civ. P. 57, or other applicable law, enter a declaratory judgment providing as follows:
  - a. That Physician Plaintiffs cannot be terminated "for cause" for not executing any new contracts with Atrium;
  - b. That in light of the delays induced by Atrium as described above, the Physician Plaintiffs cannot be terminated for any reason other than good cause as they transition to an independent medical practice;
  - c. That the Existing Restrictive Covenants, inclusive of the Non-Compete and Non-Solicitation Provisions in the Existing

Employment Agreements are inapplicable and/or void, unenforceable, invalid, and of no force or effect because they are overly broad as to scope, illegal, against public policy and are otherwise void, unenforceable, invalid and of no force or effect;

d. That the New Proposed Agreements are void, unenforceable, invalid, and of no force or effect because of a lack of consideration or otherwise; and

e. That the non-compete and non-solicitation provisions of all aforementioned Agreements are overly broad as to scope, illegal, against public policy and otherwise void, unenforceable, invalid, and of no force or effect;

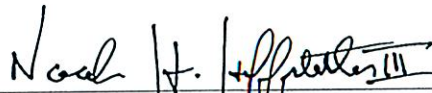
4. For a trial by jury on all issues so triable;

5. That the costs of this action, including reasonable attorneys' fees, be taxed against Defendants pursuant to N.C.G.S. § 75-16.1 other applicable law; and

6. For such other and further relief as the Court deems just and proper.

This the 2nd day of April, 2018.

NELSON MULLINS RILEY & SCARBOROUGH LLP



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VERIFICATION

I, being duly sworn, have read the foregoing Verified Complaint and am acquainted with all of the facts and circumstances stated therein; that the contents of same are, to my knowledge, true except as to those matters and things stated therein upon information and belief, and, as to those, I believe them to be true.



Enrico O. Belgrave, M.D.

STATE OF North Carolina

COUNTY OF Mecklenburg

Sworn to and subscribed before me, this 29 day of March, 2018.

Deanna O'Brien

Deanna O'Brien

Notary Public

My commission expires:

2/22/23

