IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:15-cv-00229-BO

COUNTY OF YADKIN,

Plaintiff,

v.

CAH ACQUISITION COMPANY 10 LLC, HMC/CAH CONSOLIDATED, INC., and RURAL COMMUNITY HOSPITALS OF AMERICA, LLC,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION FOR ORDER TO APPEAR AND SHOW CAUSE AND OTHER APPROPRIATE RELIEF

In accordance with Local Rule 7.2, Plaintiff the County of Yadkin (the "County") respectfully submits this memorandum in support of the County's Motion for Defendant CAH ACQUISITION COMPANY 10 LLC ("CAH 10") and, to the extent applicable, the other Defendants, to Appear and Show Cause why it should not be held in contempt and for other appropriate relief.

INTRODUCTION

The County's Motion to Appear and Show Cause is before this Court due to CAH's and the other Defendants' brazen disregard for a clear and concise Court Order. CAH wishes to distance itself from its intentional violation of a Temporary Restraining Order ("TRO") issued by the Honorable Donald Stephens, Senior Resident Judge of the Wake County Superior Court. The TRO explicitly required CAH not to cease operations of Yadkin Valley Community Hospital (the "Hospital.) At the time the Court issued the TRO and when Defendants received actual notice, the Hospital was open, clinical staff were working, and patients were being treated.

In response to the TRO, CAH, in coordination with the other Defendants, promptly shut down the lone hospital and only emergency department in Yadkin County. Such action was taken without notice to the County or to the public or to patients who regularly receive care from Hospital employees. CAH blatantly ignored the TRO and locked the doors of the Hospital, leaving local residents without access to necessary, critical medical services. In so doing, CAH willfully defied an explicit Order from the Court. The County now seeks appropriate relief for CAH's callous disregard of the judicial system and the well-being of Yadkin County residents.

RELEVANT FACTS AND PROCEDURAL SUMMARY

Parties and Background

Plaintiff is a county and political subdivision of the State of North Carolina. (D.E. 1) The County has not yet filed its complaint in this Court because the Wake County Court granted an express order allowing until June 11, 2015 to file its pleading due to the emergency nature of this action. However, the County is working diligently on this pleading. The County's action centers on Defendants' breach of multiple contracts related to operation of the Hospital in Yadkin County and provision of vital medical services to the local community. The Hospital is the sole hospital and emergency department in Yadkin County and is a safety net for local residents.

Defendant CAH leased the Hospital premises and operated it as a licensed critical access hospital pursuant to a hospital lease dated May 1, 2010 (the "Lease"). A true copy of the Lease is supplied as Exhibit A in support of the Declaration of Lisa Hughes, attached hereto as Exhibit 1. Upon information and belief, Defendant HMC/CAH Consolidated, Inc. ("Consolidated") is the sole member and manager of Defendant CAH. (Application for Certificate of Authority and 2013 Limited Liability Company Annual Report, attached hereto as Exhibit 2). Upon information and belief Defendant Rural Community Hospitals of America, LLC ("RCHA") is

also related to Defendant Consolidated. According to the Affidavit of Trent Skaggs filed by Defendant in this Court on May 29, 2015, RCHA is under contract to operate the Hospital for Defendant CAH. (D.E. 1-1) Defendant CAH holds (or held) the license to operate the hospital, which is the only hospital in Yadkin County, North Carolina.

The County instituted this action in Wake County Superior Court on May 22, 2015 by filing an application and order extending the time to file a complaint (the "Application") pursuant to Rule 3 of the North Carolina Rules of Civil Procedure and obtaining the issuance of a summons (the "Summons"). (D.E. 1-2 at pp. 1-4) Simultaneously, the County filed a Motion for Temporary Restraining Order and Preliminary Injunction (the "Motion") and supporting affidavit. (D.E. 1-2 at pp. 5-10).

The County filed its action and its Motion on an emergency basis after learning of CAH's intention to close the Hospital, without notice to the County or the public, on Saturday, May 23, 2015, in breach of its agreements which required CAH to continue operations until July 31, 2015. (D.E. 1-2 at p. 5, ¶¶ 2-3; at p. 8, ¶ 3) By way of background, during May 2015, the County and CAH were in negotiations regarding whether CAH would continue to lease and operate the hospital after the term of the lease expired on July 31, 2015, but had not been able to agree upon terms at that point. (Exhibit 1, at ¶ 7). Despite the fact that no agreement had been reached at that time, the County did not release CAH from its contractual obligation to operate the Hospital to the end of the contractual term. (*See* Exhibit 1, at ¶ 11). Further, prior to the events explained below, Defendants refused to provide the County with meaningful notice of their intent to close the Hospital on May 23, 2015 or at any other point prior to expiration of the full lease term. (Exhibit 1, at ¶ 12).

<u>The County Attempts to Keep the Hospital Operational and Available to Patients</u>

On Friday, May 22, 2015, state regulators from the North Carolina Department of Health and Human Services ("DHHS") were in the Hospital carrying out a regulatory survey, when they learned from hospital employees, apparently including Shawn Bright (an executive employed by CAH or another Defendant), that the Hospital would be closed and all employees fired at 7:00 a.m. the following day, Saturday, May 23, 2015. (*See* D.E. 1-2 at p. 5, ¶¶ 2-3) A DHHS representative informed the County of the potential closing of Yadkin County's only hospital later on May 22. (*Id*.)

Defendant's early closure of the Hospital in breach of contractual agreements would have (and in fact did) endanger current hospital patients undergoing treatment and leave other Yadkin County residents without access to necessary critical medical services. (*Id*.; Wallace Affidavit, attached hereto as Exhibit 3, at ¶¶ 8-11; Pruitt Affidavit, attached hereto as Exhibit 4, at ¶¶ 8-11; Waddell Affidavit, attached hereto as Exhibit 5, at ¶ 6). Although the County has engaged in negotiations with other potential operators of the Hospital, all such discussions related to beginning operations no earlier than the expiration of the lease term, approximately two (2) months from now. Because of the time required to obtain state authority for a license transfer and federal authorization for reimbursement for services to Medicare and Medicaid patients and other administrative requirements, no provider could commence operations immediately. Therefore, as Defendants knew, any sudden closure of the Hospital by CAH would deprive the citizens of the county of a hospital, including the emergency services that it provides, and could make it more difficult to re-open in the future.

Upon fortuitously learning of Defendants' intent to cease hospital operations without notice on May 23, 2015, the County filed the state court action on an emergency basis, including the Motion for immediate emergency injunctive relief on the afternoon of May 22, 2015. (D.E.

1-2) On May 22, 2015 at 5:15 pm,[1] the state court judge issued a Temporary Restraining Order (the "TRO"), enjoining Defendant from ceasing operations at the Hospital. (D.E. 1-2 at p. 11) At the same time, the state court judge also calendared a hearing on the County's Motion for June 1, 2015 to determine if continued preliminary injunctive relief was warranted. (*Id.*)

In an effort to keep the hospital temporarily operational and available to the citizens of Yadkin County, the County expeditiously delivered a copy of the Application, Summons, Motion, the affidavit in support thereof, and the TRO to Dennis Davis by email at 5:59 pm EST on May 22, 2015. A true copy of this e-mail is attached hereto as Exhibit 6. The County understands from filings with the Secretary of State that Mr. Davis was or is the Secretary and Executive Vice President of HMC/CAH Consolidated, Inc. ("Consolidated"). Defendant Consolidated is the sole member and believed to be the manager of Defendant CAH. (D.E. 1-1 at p. 1, ¶ 2) Mr. Davis is also the Chief Legal Officer of Rural Community Hospitals of America ("RCHA"). According to filings in this Court, RCHA is a related entity who operates the Hospital for Defendants. (D.E. 1-1 at p. 1, ¶ 3) Mr. Davis confirmed receipt of the email five minutes later at 6:04 pm. (Exhibit 7, attached hereto). The County also attempted service by hand-delivery upon Defendant CAH's registered agent in Wake County on May 22, 2015, but the registered agent was closed. Defendants refused hand delivery of the documents at the Hospital during the evening hours of May 22, 2015 at the direction of senior management.

Defendants Ignore the TRO and Shut Down the Hospital

Despite having actual notice of the TRO, Defendants immediately proceeded to violate the order and shut down the Hospital, without regard to its detrimental impact on local residents. Minutes after the TRO was sent to Mr. Davis, Linda Way (who is, upon information and belief, a paralegal who works for Mr. Davis) sent an email to Azzie Conley, the Chief of the Acute and

[1] All times referenced herein are Eastern Standard Time.

Home Care Licensure Section of the North Carolina Department of Health and Human Services, Division of Health Service Regulation, with an attached letter (the "Closure Notice") announcing the closure of the Hospital, "effective immediately." (Exhibit 8, attached hereto). Such notice may affect the validity of the Hospital's license and the ability of the County and/or another operation to resume hospital operations.

At approximately 6:00 p.m. on May 22, 2015, just after Mr. Davis received notice of the TRO, Defendants' executive, Shawn Bright, received a phone call from Trent Skaggs, an officer of Defendant(s). (Murr Declaration, attached hereto as Exhibit 9, at ¶¶ 5-6) Immediately ***after*** the call, sometime after 6:00 p.m., Mr. Bright directed David Murr, a physician's assistant, to lock the doors and shut down after the two remaining emergency department patients were discharged. (*Id*.) At 6:00 p.m., hospital staff were still treating patients in the emergency department. Around the same time, Mr. Bright and other administrators began posting "closed" signs on the doors. (Waddell Affidavit, Exhibit 5, at ¶ 5; Parks Affidavit, attached hereto as Exhibit 10 at ¶ 5) The staff members were directed to finish treating the patients and discharge them as soon as possible. (Exhibit 5 at ¶ 6; Exhibit 10 at ¶ 6) The last patients were not discharged until approximately 6:40 p.m., well after Defendants received notice of the TRO. (Exhibit 5 at ¶ 7; Exhibit 10 at ¶ 8).

The closure of the Hospital minutes after receipt of the TRO represents an acceleration of Defendants' plan, which was to breach its agreements with the County and shut down the Hospital without meaningful notice. Based upon documents from Defendants and information from DHHS, it appears that Defendants intended to operate the hospital at least through 7:00 a.m. on May 23 until they received notice of the TRO. (D.E. 1-2 at p. 5, ¶ 3; Wallace Aff., Exhibit 3, at ¶ 4). Indeed, Defendants eventually issued a press release regarding the closure

which stated that the Hospital "closed its hospital business on May 23," apparently neglecting to update the press release to reflect the Defendants' accelerated conduct on the evening of May 22 after receiving the TRO. A true copy of the press release is attached hereto as Exhibit 11. Defendants apparently had previously intended to shut down the hospital on May 23, but *hastened their conduct upon receiving notice of the TRO*.

Defendants' intentional and callous disregard for the TRO has endangered, and continues to endanger, the health and safety of the residents of Yadkin County by shuttering the county's sole source of emergency medical treatment and disrupting continuity of care. (Wallace Aff., Exhibit 3, at ¶¶ 8, 10-11; Waddell Aff., Exhibit E, at ¶ 6) Local residents are now required to travel out of the county for any serious medical needs, which results in delayed medical evaluation and treatment. Defendants neglected to take even modest steps to protect patients, such as advance notification of closure, making arrangements for alternative treatment, or arranging for emergency response and transport of patients in crisis have they made provisions to ensure that patients continue to receive medical care. (Wallace Aff., Exhibit 3, at ¶ 8, 10-11; Pruitt Aff., Exhibit 4, at ¶ 9-11) Indeed, only days after locking the doors to the Hospital, patients arrived for their scheduled appointments because they had received absolutely no warning from Defendants that they would close the Hospital and Defendants provided no alternative care arrangements. (Sapp Affidavit, attached hereto as Exhibit 12, at ¶ 2-5). These patients have faced significant hardships in finding alternative care due to the haphazard way Defendants closed the Hospital. Several had difficulty refilling prescriptions, obtaining their records, and transferring care.

The County has had to divert significant resources to address the sudden closure of the lone critical care hospital, including posting sheriff's deputies on site to secure the premises and

posting EMS staff outside the Hospital to address any patient who seeks treatment at the now-closed Emergency Department. (Hughes Declaration, Exhibit 1, at ¶¶ 14-16). Defendants failed to address either of these issues when they shuttered the Hospital, leaving the County to step in and try to protect the public.

Moreover, the County has heard from community members that equipment necessary and beneficial for the provision of medical services to local residents has been removed from the Hospital by Defendants. That is important for two reasons. First, such equipment is needed to provide medical care to patients when and if the Hospital is reopened following Defendants' wrongful closure. Secondly, by contract, all equipment reverts to the County upon abandonment or desertion by Defendants; thus, Defendants are taking property that belongs to the County without notice and without permission.

Defendants Act to Avoid the Scheduled Preliminary Injunction Hearing

The TRO directed the parties to appear at 10:00 a.m. Monday, June 1, 2015 for a preliminary injunction hearing in Wake County Superior Court, as the TRO expires after ten days. (*See* D.E. 1-2 at p. 11, TRO referenced earlier). However, on Friday May 29, 2015, less than one business day prior to the scheduled hearing, Defendant CAH filed a notice of removal to this Court on Friday, May 29, 2015 at approximately 1:45 p.m., depriving the Wake County Superior Court of further jurisdiction to enter a preliminary injunction or otherwise prevent the TRO from expiring. (D.E. 1). Defendants knew of the hearing scheduled for June 1, 2015 since May 22, 2015, but waited until the eve of the hearing to remove the case. Defendants provided no advance notice to the County of the planned removal. It appears that the removal to this Court Friday afternoon prior to a hearing on Monday morning was designed to prevent the issuance of a preliminary injunction and therefore to ensure the lapse of the TRO.

ARGUMENT

CAH's willful defiance of the TRO constitutes contempt of court.

I. CAH SHOULD BE HELD IN CIVIL CONTEMPT FOR CONTINUING TO CEASE HOSPITAL OPERATIONS AFTER NOTICE OF THE TRO.

A finding of civil contempt is appropriate if the moving party shows by clear and convincing evidence: "(1) the existence of a valid decree of which the alleged contemnor had actual or constructive knowledge; (2) that the decree was in the movant's favor; (3) . . . that the alleged contemnor by its conduct violated the terms of the decree, and had knowledge (at least constructive knowledge) of such violations; and (4) . . . that [the] movant suffered harm as a result." *Ashcraft v. Conoco, Inc.*, 218 F.3d 288, 301 (4th Cir. 2000) (quotation marks omitted).

Civil contempt does not require a finding of willful intent. *In re Gen. Motors Corp.*, 61 F.3d 256, 258 (4th Cir. 1995). The inquiry focuses only on whether in fact the alleged contemnor's conduct complied with some "unequivocal command" set forth in specific detail in the Order. *Id.* (citation omitted); *accord Howard Johnson Co. v. Khimani*, 892 F.2d 1512, 1516 (11th Cir. 1990) ("[T]he focus of the court's inquiry in civil contempt proceedings is not on the subjective beliefs or intent of the alleged contemnors in complying with the order, but whether in fact their conduct complied with the order at issue."). As such, a finding of contempt may be appropriate even where the acts in violation of the order were done innocently or inadvertently (although they were not inadvertent or innocent here). *See Gen. Motors*, 61 F.3d at 258. Upon a prima facie showing of these elements, the burden shifts to the alleged contemnor to justify his non-compliance. *See United States v. Rylander*, 460 U.S. 752, 757 (1983).

A. The TRO is a Valid Order in Favor of the County, the Violation of which is Subject to Contempt.

The TRO issued by the state court judge was undoubtedly a valid order, in the County's favor. The TRO plainly forbid CAH from "ceasing operations at Yadkin County Community

Hospital." D.E. 1-2 at p. 11. Defendants did not challenge the validity of the TRO or move to dissolve, opting instead to remove the action at the last minute. However, CAH's removal to this Court does not remove the force of the TRO or obviate the obligation to abide by its terms. Rather, the TRO remains in effect through its facial term and this Court may treat the TRO as if it was issued by this Court. *See* 28 U.S.C. § 1450 ("All injunctions, orders, and other proceedings had in such [state court] action prior to its removal shall remain in full force and effect until dissolved or modified by the district court."); *see also Granny Goose Foods, Inc. v. Bd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 436 (1974) ("After removal, the federal court takes the case up where the State court left it off.") (quotation marks omitted). Despite the removal, CAH's defiance of the state court order is properly a subject for a finding of contempt by this court. *See Demoss v. Kelly Servs, Inc.*, 355 F. Supp. 1111, 1112 (D.P.R. 1972) *aff'd*, 493 F.2d 1012 (1st Cir. 1974).

For example, in *DeMoss v. Kelly Services, Inc.*, the plaintiff obtained a temporary restraining order from a Commonwealth of Puerto Rico Superior Court Judge. *Id*. Defendant removed the action to the United States District Court for the District of Puerto Rico. *Id*. Plaintiff moved the District Court for, among other things, an order for defendant to appear and show cause why it should not be held in contempt for violations of the restraining order issued prior to removal. *Id*. The District Court found it had the jurisdiction and authority to compel defendant to appear and show cause why it should not be adjudged in contempt. *Id*. at 1113.

Likewise, the TRO here is a valid order that CAH violated at its own peril. As of the date of this filing, the TRO remains in effect just as if issued by this Court, and CAH continues to refuse to comply. The court's "command" in the TRO was "unequivocal": CAH was "enjoin[ed] from ceasing operations at Yadkin Valley Community Hospital." *See Gen. Motors Corp.*, 61

F.3d at 258; D.E. 1-2 at p. 11. There is no question that Defendants, including CAH, have ceased operating the Hospital. Even if Defendants took some steps towards closure prior to the TRO, it is abundantly clear that they took additional actions, including discharging all remaining patients, terminating all or substantially all staff, and giving up their license, after the TRO was issued and they knew of it. Thus, CAH subsequent intentional cessation of Hospital operations, in direct contravention of the TRO, warrants a finding of contempt. *See Gen. Motors Corp.*, 61 F.3d at 258.

B. Defendants Violated the TRO Despite Actual and Constructive Notice of the TRO's Command Not to Cease Operation of the Hospital.

Defendants, including CAH, had actual and constructive knowledge of the TRO and were thus bound by its terms as of 5:59 on May 22, 2015. Rule 65(d)(2) of the Federal Rules of Civil Procedure provides that a temporary restraining order is binding on "parties," the "officers, agents, servants, employees, and attorneys" of parties, and "other persons who are in active concert or participation with anyone [previously] described" "who receive actual notice of it by personal service or otherwise[.]" Actual notice of the TRO was provided to Dennis Davis, an officer of Consolidated, which is the sole member and manager of Defendant CAH and RCHA, which is apparently the operator under contract with CAH. Thus, knowledge obtained by an officer and agent of Consolidated is imputed to CAH through well-established agency principles. *See Jay Grp., Ltd. v. Glasgow*, 139 N.C. App. 595, 601, 534 S.E.2d 233, 237 (2000) ("Knowledge of the president or agent of a corporation is imputed to the corporation itself."). Furthermore, as the Chief Legal Officer to Defendant RCHA, and Mr. Davis' knowledge is imputed to that entity as well. Lastly, executives from Defendants called executive staff at the Hospital, apparently to notify them of the TRO and direct immediate closure of the Hospital. *See* Murr Declaration, Exhibit 9, at ¶¶ 5-6.

Of course, the chain of events following the delivery of the TRO to Mr. Davis establishes that all Defendants were well aware of the entry of the TRO, and rather than comply, Defendants accelerated their plan in direct violation of the court's order. As of the afternoon of May 22, though couched in secrecy, the Defendants apparently intended to operate the Hospital until May 23. *See* D.E. 1-2 at p. 5, ¶ 3; Wallace Aff., Exhibit 3, at ¶ 4. However, minutes after receiving the TRO, Mr. Davis' paralegal sent the Closure Notice to DHHS. Exhibit 8. Around the same time, Trent Skaggs (a Consolidated officer) directed CAH's executive team to begin shutting down the Hospital immediately. *See* Murr Declaration, Exhibit 9, at ¶¶ 5-6. The circumstances make clear that all Defendants, including CAH, were put on actual notice of the TRO within minutes of the 5:59 p.m. e-mail and Defendants nevertheless conspired to hastily shut down the hospital in direct violation of the TRO.

That the Application, Motion, and TRO were not personally served until the following Tuesday is of no import. *See Vuitton et Fils S. A. v. Carousel Handbags*, 592 F.2d 126, 129 (2d Cir. 1979) ("[P]ersonal service of an injunction is not required so long as those whom the plaintiff seeks to hold in contempt had actual notice of the decree."); *accord United States v. McAndrew*, 480 F. Supp. 1189, 1194 (E.D. Va. 1979). CAH had actual notice of the TRO and went on to deliberately violate its terms at its own peril.[2] This Court, "in the exercise of its equitable powers, may hold in contempt those who act in concert with named parties to frustrate

[2] This principle is the same under North Carolina state law. Rule 65 of the North Carolina Rules of Civil Procedure provides that a temporary restraining order is binding "upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them **who receive actual notice in any manner of the order by personal service or otherwise.**" N.C. R. Civ. P. 65(d) (emphasis added); *see*, *e.g.*, *Leonard E. Warner, Inc. v. Nissan Motor Corp. in U.S.A.*, 66 N.C. App. 73, 75, 311 S.E.2d 1, 2 (1984) (finding non-party to lawsuit served with temporary restraining order and notified of scheduled hearing to determine propriety of preliminary injunction was "on notice the Restraining Order affected it specifically" and therefore was "subject to the provisions of the order as a basis for contempt").

an injunctive decree or to avoid compliance with it"—which is any and all of the Defendants here. *See Equal Employment Opportunity Comm'n v. Int'l Longshoremen's Ass'n*, 541 F.2d 1062, 1064 (4th Cir. 1976).

C. The County Continues to Suffer Harm Due to Defendants' Violation of the TRO.

The County, as an entity, and the citizens of Yadkin County, continue to suffer harm due to Defendants' unexpected closure of the Hospital. Keeping the Hospital open and available to county residents was the sole purpose of the Court's order. The subsequent closure (and substantial change in the status quo) continues to cause harm. Defendants' hurried effort to "beat the clock" on the TRO pushed current patients out the door. *See* Exhibit 3; Exhibit 4; Exhibit 5. Patients' continuity of care has been and continues to be disrupted. *See id.* The County has had to reprioritize and divert law enforcement to secure the Hospital premises and equipment and medical supplies locked inside. Exhibit 1 at ¶¶ 14-15. The County has also had to post EMS staff outside the Hospital to treat any wayward emergency patient because Defendants refused to do so themselves. *Id.* at ¶ 16. Further, County administrative staff have been inundated with calls from citizens concerned with the future of their medical care and vendors seeking recovery of their equipment located in the Hospital. *Id.* at ¶¶ 13, 17. Indeed, the full scope of harm to the County and its residents is not yet certain because it is ongoing.

D. The Remedy

Thus, the Defendants, individually and collectively, had actual knowledge of a valid court order and proceeded deliberately, in concert, to assist CAH violate its terms. Defendants' actions have caused and continue to cause harm to the County. Accordingly, this Court may impose appropriate "sanctions for civil contempt to coerce obedience [to the terms of the TRO] or to compensate [the County] for losses sustained as a result of the contumacy." *See In re Gen.*

Motors Corp., 61 F.3d 256, 258 (4th Cir. 1995) (quotation marks omitted).[3] "The appropriate remedy for civil contempt is within the court's broad discretion." *Id.* at 259 (4th Cir. 1995).

As of the date of this filing, the TRO remains in effect and the Court has broad discretion to fashion a remedy to coerce CAH (and Defendants) to resume Hospital operations (or, at a minimum, take steps to address the most serious issues related to patient care and halt efforts to further damage the County) and to compensate the County for the damage Defendants have caused. *See id*. Defendants appear to assert that complying with the TRO (or any additional injunctive relief) now would cause some loss of profits or revenues. D.E. 1 at ¶ 14. Defendants' financial protestations—which pale when compared with the real danger to local residents which Defendants created by removing emergency care from the County—are unavailing because any financial loss to Defendants is *due to Defendants' own wrongful conduct*. If Defendants fired its employees while it was still under an obligation to operate the Hospital, any "premium" it purportedly would owe to re-hire these staff is solely due to their own actions. Moreover, the "loss" described by CAH for May 2015 was caused (or at least exacerbated) by Defendants' restricting operations and closing during May 2015. It is unjust to allow Defendants to rely upon a loss they created by shutting down the Hospital, in violation of contractual obligations and a Court Order, before the end of the month.

[3] North Carolina case law also provides that civil fines are an appropriate sanction for civil contempt. *See Jolly v. Wright*, 300 N.C. 83, 92, 265 S.E.2d 135, 142 (1980), *overruled on other grounds by McBride v. McBride*, 334 N.C. 124, 431 S.E.2d 14 (1993) ("The purpose of civil contempt . . . is to use the court's power to impose fines or imprisonment as a method of coercing the defendant to comply with an order of the court . . .."); *Tyll v. Berry*, -- N.C. App. --, --, 758 S.E.2d 411, 420 (2014) *review denied*, 367 N.C. 532, 762 S.E.2d 207 (2014) *and appeal dismissed*, 367 N.C. 532, 762 S.E.2d 207 (2014) (holding that a monetary fine payable to the opposing party is an appropriate sanction for civil contempt).

The County recognizes that there may be legal and pragmatic issues with returning the Hospital to operation, including the fact that Defendants may have surrendered their license to the state (again, immediately after receiving notice of the TRO). Nevertheless, when assessing the propriety of contempt sanctions in its discretion, the Court must consider that Defendants have placed themselves in this predicament by willfully ignoring the TRO.

At the least, this Court may award civil contempt sanctions that would fairly compensate the County for the additional emergency measures it has had to undertake to mitigate the damage caused by Defendants' conduct here. The County has had to reprioritize law enforcement scheduling and EMS availability to secure the Hospital and treat any emergency patient who presents to the now-closed emergency department. Exhibit 1 at ¶¶ 14-16. County administrative staff have been inundated with calls from citizens concerned with the future of their medical care and the privacy of their medical information, and vendors seeking recovery of their equipment located in the Hospital. *Id*. at ¶¶ 13, 17. The Court enjoys a "broad discretion" in fashioning an appropriate remedy to compensate the County for the fallout from Defendants' contemptuous acts. *See Gen. Motors Corp.*, 61 F.3d at 259.

Additionally, this Court should award costs and attorneys' fees associated with the contempt motion. *Cromer v. Kraft Foods, Inc.*, 390 F.3d 812, 822 (4th Cir. 2004) (recognizing "attorneys' fees as appropriate compensation" to a complainant seeking civil contempt sanctions). Refusal to comply with an order of a court that rises "to the level of 'obstinence or recalcitrance'" warrants the award of attorneys' fees. *Columbia Gas Transmission Corp. v. Mangione Enterprises of Turf Valley, L.P.*, 964 F. Supp. 199, 204 (D. Md. 1996) (citing *Omega World Travel, Inc. v. Omega Travel, Inc.*, 710 F. Supp. 169, 173 (E.D. Va. 1989)). "Once a decision has been made to award attorney's fees, the district court has 'considerable discretion'

in determining the amount of attorney's fees to award." *JTH Tax, Inc. v. Noor*, No. 2:11CV22, 2012 WL 5286955, at *2 (E.D. Va. Oct. 23, 2012) (quoting *Colonial Williamsburg Found. v. Kittinger Co.*, 38 F.3d 133, 138 (4th Cir. 1994)).

Here, Defendants "obstinence" and "recalcitrance" to the TRO is plainly evident by their rush to close the Hospital a day earlier than they had planned, pushing patients and employees out the door, in an ill-advised effort to "beat the clock." *See Columbia Gas Transmission Corp., L.P.*, 964 F. Supp. at 204. Defendants' conduct after receiving notice of the Court's clear directive not to close the Hospital cannot be characterized as anything other than a willful and deliberate violation of the TRO. As such, Defendants' conduct rises to a level that warrants the award of attorneys' fees. *See id.*

II. THE COURT SHOULD INITIATE CRIMINAL CONTEMPT PROCEEDINGS.

CAH's deliberate, callous conduct in defiance of the TRO compromises ongoing patient care and otherwise endangers Yadkin County residents by restricting access to life-saving medical services and warrants the punitive sanctions imbued in this Court in its criminal contempt power. While civil contempt attempts to coerce a party to comply with a court order or to compensate a party injured by contemptuous conduct, *Gen. Motors Corp.*, 61 F.3d at 258, the Court's criminal contempt power is intended to promote respect for the judicial process by "punish[ing] an 'act derogatory to the power and authority of the [C]ourt.'" *Brandt v. Gooding*, 636 F.3d 124, 135 (4th Cir. 2011) (quoting *Interstate Commerce Comm'n v. Brimson*, 155 U.S. 3, 5 (1894)). To this end, this Court has the inherent and statutory power "to punish by fine or imprisonment, or both," a party's conduct, including "[d]isobedience or resistance to its lawful writ, process, order, rule, decree, or command." 18 U.S.C. § 401.

"To support a conviction of criminal contempt for violation of a court order, it must be proved beyond a reasonable doubt, that a person willfully, contumaciously, intentionally, with a

wrongful state of mind, violated a decree which was definite, clear, specific, and left no doubt or uncertainty in the minds of those to whom it was addressed." *United States v. McMahon*, 104 F.3d 638, 642 (4th Cir. 1997).

The Court itself has the sole discretion to initiate criminal contempt proceedings, which are "'not dependent on the [success] or even the continuation of the underlying suit." *Id*. (quoting *Bray v. United States*, 423 U.S. 73, 76 (1975)). "Indeed, the very 'purpose of a criminal court is not to provide a forum for the ascertainment of private rights' but 'to vindicate the public interest in the enforcement of the criminal law.'" *Id*. (quoting *Standefer v. United States*, 447 U.S. 10, 25 (1980)). "Criminal contempt is a crime in the ordinary sense," and "criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings." *Bloom v. Illinois*, 391 U.S. 194, 201 (1968). "At a minimum, criminal contempt defendants have the right to receive notice of the criminal nature of the charges . . . and to be prosecuted by an independent prosecutor[.]" *Bradley v. Am. Household Inc.*, 378 F.3d 373, 379 (4th Cir. 2004) (citation omitted).

As explained in Section I above, CAH willfully and intentionally violated the TRO—and continues to do so as of the date of this filing. Indeed, when faced with notice of the TRO, CAH and the other Defendants accelerated the process of closure in an attempt to conceal from the County and the Court their deliberate violation of the TRO. Such conduct is precisely the type of "'act derogatory to the power and authority of the [C]ourt'" that warrants criminal sanctions. *See Brandt v. Gooding*, 636 F.3d at 135. Failure to take action will embolden other litigants to ignore—and brazenly take action to violate—Court orders. Therefore, the County respectfully requests that this Court initiate criminal contempt proceedings, appoint a disinterested prosecutor, and order CAH to appear and show cause why it should not sanctioned for its clear

and willful defiance of the TRO. *See United States v. McMahon*, 104 F.3d 638, 642 (4th Cir. 1997).

CONCLUSION

CAH's willful disregard of the TRO issued (in coordination with the other Defendants) before removal to this Court constitutes both civil and criminal contempt. Plaintiff requests that CAH (and, to the extent appropriate, the other Defendants) be ordered to appear and show cause why it should not be sanctioned for civil contempt, that this Court award civil contempt sanctions that this Court deems appropriate, and that this Court initiate criminal contempt proceedings against CAH.

Respectfully submitted this the 1st day of June, 2015.

SMITH MOORE LEATHERWOOD LLP

/s/ William R. Forstner

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the MEMORANDUM IN SUPPORT OF MOTION FOR ORDER TO APPEAR AND SHOW CAUSE AND OTHER APPROPRIATE RELIEF was filed with the clerk using the CM/ECF system which will send notice to all parties of record and electronic notification and was served by United States First Class mail upon the following parties:

J. Alexander S Barrett
Hagan Davis Mangum Barrett & Langley PLLC
300 N. Greene Street, Suite 200
Greensboro, NC 27401
Attorneys for CAH Acquisition Company 10 LLC

And was served by certified mail, return receipt requested upon the following parties:

HMC/CAH Consolidated, Inc.
c/o Management Agent
1100 Main Street, Suite 2350
Kansas, MO 64105

Rural Community Hospitals of America LLC
c/o Registered Agent: Corporation Service Company
327 Hillsborough Street
Raleigh, NC 27603

This, the 1st day of June, 2015.

SMITH MOORE LEATHERWOOD LLP

By: /s/ William R. Forstner
William R. Forstner