IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No.: 5:15-CV-229

COUNTY OF YADKIN, Plaintiff, v. CAH ACQUISITION COMPANY 10 LLC; HMC/CAH CONSOLIDATED, INC.; and RURAL COMMUNITY HOSPITALS OF AMERICA LLC, Defendants.	)	**ANSWER AND COUNTERCLAIMS OF DEFENDANT CAH ACQUISITION COMPANY 10 LLC** (Jury Trial Demanded)

COMES NOW Defendant CAH Acquisition Company 10 LLC ("CAH") and answers the Amended Complaint and asserts counterclaims filed herein for itself and not for Defendants HMC/CAH Consolidated, Inc. ("HMC") or Rural Community Hospitals of America LLC ("RCHA").

ANSWER

FIRST DEFENSE

Answering the correspondingly numbered paragraphs of the Complaint, CAH alleges and says the following:

1. It is admitted that the County of Yadkin (the "County") is a political subdivision of the State of North Carolina and that this action has been brought on behalf of the County. It is denied that this action has been brought for the benefit of the citizens and residents of Yadkin County.

2. It is admitted that CAH is a Delaware limited liability company. It is

denied, as of the time of the filing of this Answer that CAH's principal office is in Yadkinville, North Carolina. It is admitted that HMC is the sole member of CAH. It is denied that HMC acts as the manager/official/organizer of CAH. It is admitted that CAH has an agent for service of process located in Wake County, North Carolina.

3. As these allegations do not pertain to CAH, no answer is required. To the extent any answer is required, the allegations of this paragraph are denied.

4. As these allegations do not pertain to CAH, no answer is required. To the extent any answer is required, the allegations of this paragraph are denied.

5. Paragraph 5 states legal conclusions to which no response is required. To the extent that a response is required, CAH denies the allegations of Paragraph 5.

6. Paragraph 6 states legal conclusions to which no response is required. To the extent that a response is required, CAH denies the allegations of Paragraph 6.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. CAH states that the Hospital was closed to protect and insure patient safety. All other allegations of Paragraph 12 are denied.

13. It is admitted that the Wake County Superior Court issued its Temporary Restraining Order ("TRO"), the contents of which speak for themselves. CAH denies all allegations that are inconsistent with or contrary to the TRO. It is admitted that Plaintiff

secured the TRO without any prior notice to CAH, HMC, or RCHA, even though Plaintiff knew Defendants' identities and contact information, including the identity of CAH's attorney and his contact information. All other allegations of Paragraph 13 are denied.

14. Paragraph 14 fails to assert a factual allegation that CAH can either admit or deny. To the extent a response is required, CAH denies the allegations of Paragraph 14.

15. Admitted.

16. It is admitted that the Hospital was a critical access hospital, which are reimbursed differently than other hospitals. All other allegations of Paragraph 16 are denied.

17. CAH admits that on April 22, 2010 it entered into a Sale Agreement. CAH denies all allegations that are inconsistent with or contrary to the Sale Agreement. CAH further states that the Sale Agreement was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 17 are denied.

18. CAH admits that HMC entered into a Guaranty. CAH denies all allegations that are inconsistent with or contrary to the Guaranty. CAH further states that the Guaranty was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 18 are denied.

19. CAH states that the Sale Agreement speaks for itself and it denies all allegations that are inconsistent with or contrary to the Sale Agreement. Neither CAH nor any Defendant agreed to operate the Hospital for any specific period of time, and the Hospital Lease does not contain any covenant to operate the hospital on the leased premises through the end of the lease term or any extensions thereof. CAH further states

that the Sale Agreement was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 19 are denied.

20. CAH states that the Sale Agreement speaks for itself and it denies all allegations that are inconsistent with or contrary to the Sale Agreement. CAH further states that the Sale Agreement was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 20 are denied.

21. CAH states that the Sale Agreement speaks for itself and it denies all allegations that are inconsistent with or contrary to the Sale Agreement. CAH specifically denies that the Sale Agreement barred CAH or any Defendant from closing the Hospital. CAH further states that the Sale Agreement was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 21 are denied.

22. CAH states that N.C. Gen. Stat. § 131E-13 speaks for itself and denies all allegations that are inconsistent with or contrary thereto.

23. CAH states that N.C. Gen. Stat. § 131E-13 speaks for itself and denies all allegations that are inconsistent with or contrary thereto.

24. CAH states that the Lease speaks for itself and it denies all allegations that are inconsistent with or contrary to the Lease. CAH denies that the Hospital Lease contains any provision whatever requiring CAH or any Defendant to operate the Hospital on the leased premises for any specific period of time or through the end of the lease term or any extensions thereof. CAH further states that the Lease was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of

Paragraph 24 are denied.

25. CAH states that the Lease speaks for itself and it denies all allegations that are inconsistent with or contrary to the Lease. CAH denies that the Hospital Lease contains any provision whatever requiring CAH or any Defendant to operate the Hospital on the leased premises for any specific period of time or through the end of the lease term or any extensions thereof. CAH further states that the Lease was discharged in a bankruptcy proceeding and it no longer has any force or effect. All other allegations of Paragraph 25 are denied.

26. It is admitted that CAH filed for bankruptcy protection under Chapter 11. The Sale Agreement and Guaranty were discharged in bankruptcy. All other allegations of paragraph 26 are denied.

27. CAH admits that after the bankruptcy, CAH continued to lease the hospital premises but under different terms. All other allegations of Paragraph 27 are denied.

28. CAH states that the First Amendment speaks for itself and it denies all allegations that are inconsistent with or contrary to the First Amendment. All other allegations of Paragraph 28 are denied.

29. Denied.

30. Denied.

31. It is admitted that the County and CAH entered into the Second Lease Amendment, which speaks for itself and is the best evidence of its content. All other allegations of Paragraph 31 are denied.

32. It is admitted that the County and CAH entered into the Second Lease

Amendment, which speaks for itself and is the best evidence of its content. It is specifically denied that CAH was, at any time, using the Hospital premises for free. All other allegations of Paragraph 32 are denied.

33. Denied.

34. The allegations of Paragraph 34 are legal conclusions to which no response is required. To the extent that a response is required, CAH denies the allegations of Paragraph 34.

35. It is admitted that RCHA was formed as a West Virginia limited liability company on January 16, 2013. HMC denies all other allegations of Paragraph 35.

36. It is admitted that the County and CAH entered into the Third Lease Amendment, which speaks for itself and the best evidence of its content. By Plaintiff's own admission, the Third Lease Amendment was entered into for one reason: to facilitate the transfer of hospital operations from CAH to Hugh Chatham. All other allegations of Paragraph 36 are denied.

37. It is admitted that CAH held the license to operate the Hospital and that the original of that license was delivered to the County at its request. Except as specifically admitted herein, the allegations of Paragraph 37 are denied.

38. Denied.

39. It is admitted that HMC is the sole member of CAH10. All remaining allegations of Paragraph 39 are denied.

40. Denied.

41. Denied.

42. Denied.

43. It is admitted that CAH offered to enter into a long-term extension to the Hospital Lease. The County failed to negotiate in good faith and rejected CAH's offer out of hand, and violated its statutory duties and obligations under N.C. Gen. Stat. §§ 131E-13 and 14-234.1. These unlawful acts were committed by the County in furtherance of its conspiracy with Kevin Austin and Hugh Chatham to replace CAH as Hospital operator with Hugh Chatham and to transfer CAH's ownership of the business and assets of the Hospital to Hugh Chatham without adequate compensation to CAH. In committing these and other unlawful acts, the County, Mr. Austin and Hugh Chatham failed to disclose to CAH that Kevin Austin was acting as a Member of Hugh Chatham's Board of Trustees. All other allegations of Paragraph 43 are denied.

44. It is admitted that Exhibit 3 is a copy of an email, the content of which speaks for itself, but the context of which has not been alleged by Plaintiff. Except as specifically admitted herein, the allegations of this Paragraph 44 are denied.

45. Denied. The County failed to negotiate in good faith. The County failed to follow the RFP procedure required under North Carolina law. Instead, the County, Kevin Austin and Hugh Chatham conspired to replace CAH as Hospital operator with Hugh Chatham and to transfer CAH's ownership of the business and assets of the Hospital to Hugh Chatham without adequate compensation to CAH. In doing so, Mr. Austin failed to disclose to CAH his blatant conflict of interest in being both the Chairperson of the County's Board of Commissioners and a Member of Hugh Chatham's Board of Trustees.

46. Denied.

47. Denied.

48. It is admitted that on Friday, May 22, 2015, inspectors from the North Carolina Department of Health and Human Services ("DHHS") visited the Hospital for the stated purpose of carrying out an inspection. It is admitted that CAH advised the DHHS inspectors that the Hospital would close as soon as practicable, and likely by the next day, Saturday, May 23, 2015. Answering further, upon information and belief, C states that such visit was arranged by the County as a form of harassment and was done in furtherance of the conspiracy between the County, Kevin Austin and Hugh Chatham. Except as specifically admitted herein, the allegations of Paragraph 48 are denied.

49. CAH does not have information upon which to form a belief as to the truth or falsity of this allegation and the same is, therefore, denied.

50. Denied.

51. It is admitted that CAH mailed a notice to its employees concerning the closure of the Hospital and that Exhibit 4 is an example of such a notice. Except as specifically admitted herein, the allegations of Paragraph 51 are denied.

52. It is admitted that Plaintiff commenced an undefined civil action in Wake County against CAH at approximately 4:45 p.m. EDT on Friday, May 22, 2015. The remaining allegations of this paragraph are denied.

53. CAH admits that Plaintiff filed a civil action against CAH only and without giving CAH any real notice of what its claims were against CAH.

54. It is admitted that the Wake County Superior Court issued a TRO, *ex parte*, and based solely upon the representations made to the Court by Plaintiff, at 5:15 p.m.

EDT on Friday, May 22, 2015, the contents of which speak for themselves. It is admitted that Plaintiff made no attempt to provide notice to CAH or its attorney, or to HMC or RCHA prior to the proceeding despite Plaintiff knowing Defendants' identities and contact information. It is admitted that the TRO set a hearing on Plaintiff's Motion for Preliminary Injunction for Monday, June 1, 2015. It is admitted that a copy of the TRO is attached to the Amended Complaint as Exhibit 5. Except as admitted herein, the allegations of Paragraph 54 are denied.

55. It is admitted that Exhibit 6 is an e-mail sent to Mr. Davis. Except as admitted herein, the allegations of Paragraph 55 are denied.

56. It is admitted that Exhibit 7 is an e-mail sent from Mr. Davis. Except as admitted herein, the allegations of Paragraph 56 are denied.

57. Paragraph 57 contains legal conclusions to which no response is necessary. To the extent that a response is required, CAH denies the allegations of Paragraph 57.

58. CAH is without information concerning Plaintiff's alleged efforts at hand-delivery upon CAH and, accordingly, all such allegations are denied. All remaining allegations are denied.

59. Denied.

60. Denied.

61. It is admitted that at the time the TRO was delivered to Mr. Davis there were no inpatients in the Hospital and there were only two persons in the Emergency Department receiving non-emergent and non-critical care. Except as admitted herein, the allegations of this Paragraph 61 are denied.

62. Denied.

63. Denied.

64. Denied.

65. Denied.

66. Denied.

67. CAH is without sufficient information to form a belief as to the truth of the allegations of Paragraph 67 and therefore denies all such allegations.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

74. CAH is without sufficient information to form a belief as to the truth of the allegations of Paragraph 67 and therefore denies all such allegations.

75. C is without sufficient information to form a belief as to the truth of the allegations of Paragraph 67 and therefore denies all such allegations.

76. Denied.

77. It is admitted that notices of the closure of the Hospital were placed in appropriate locations. Except as admitted herein, the allegations of Paragraph 77 are denied.

78. CAH admits that the Hospital closed on May 22, 2015. Except as admitted

herein, the allegations of Paragraph 78 are denied.

79. Denied.

80. CAH is without sufficient information to form a belief as to the truth of the allegations of Paragraph 80 and therefore denies all such allegations.

81. It is admitted that CAH, after being told by Yadkin County Sheriff's officers that CAH was being evicted from the Hospital premises, advised CAH personnel onsite that they should leave the Hospital and advised CAH personnel who were scheduled to work that they should not come to the Hospital. Except as admitted herein, the allegations of this Paragraph 81 are denied.

82. It is admitted that Linda Way sent a letter to DHHS, a copy of which is attached to the Amended Complaint as Exhibit 9. Except as admitted herein, the allegations of this Paragraph 82 are denied.

83. Denied.

84. It is admitted that CAH obeyed the directives of the Yadkin County Sheriff's officers who told CAH that it was being evicted from the Hospital, that CAH locked the doors of the Hospital when its personnel obeyed the Sheriff, and that CAH advised DHHS of the Hospital's closure. Except as admitted herein, the allegations of this Paragraph 84 are denied.

85. It is admitted that CAH's press release is attached as Exhibit 10 to the Amended Complaint and that it is the best evidence of its content. Except as admitted herein, the allegations of Paragraph 85 are denied.

86. Denied.

87. It is admitted that the Hospital was closed prior to 6:00 p.m. on May 22, 2015. Except as admitted herein, the allegations of Paragraph 87 are denied.

88. It is admitted that CAH let the employees go upon closure of the Hospital. Except as admitted herein, the allegations of Paragraph 88 are denied.

89. Denied.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. CAH does not have information with which to form a belief as to the truth or falsity of the allegations of Paragraph 95 and the same are, therefore, denied.

96. Denied.

97. Denied.

98. Denied.

99. Denied.

100. Denied.

101. Denied.

102. Denied.

103. Denied.

104. Denied.

105. Denied.

106. Denied.

107. The content of the TRO speaks for itself and is the best evidence of its content. It is admitted that there was a hearing scheduled for June 1, 2015 on Plaintiff's Motion for Preliminary Injunction. Except as admitted herein, the allegations of Paragraph 107 are denied.

108. Admitted.

109. It is admitted that on Friday, May 29, 2015, CAH exercised the rights provided to it under the Federal Rules and the United States Code by filing its Notice of Removal to this Court and that upon such filing the Wake County Superior Court no longer had jurisdiction over this matter. It is admitted that CAH acted timely and fully within its right to remove the action to federal court despite the Plaintiff's strange assertion to the contrary. Except as admitted herein, the allegations of Paragraph 109 are denied.

110. Admitted.

111. Denied. CAH further states that it acted timely and fully within its right to remove the action to federal court despite the Plaintiff's strange assertion to the contrary.

112. CAH's removal documents speak for themselves and are the best evidence of their content. Except as admitted herein, the allegations of Paragraph 112 are denied.

113. Denied.

114. Denied.

CLAIM ONE: BREACH OF CONTRACT

115. CAH hereby incorporates by reference its responses to the correspondingly

numbered paragraphs of the Amended Complaint.

116. Paragraph 116 states legal conclusions to which no response is required. To the extent that a response is required, CAH denies the allegations of Paragraph 116.

117. Admitted that CAH was in existence at the time the Sale Agreement and Lease were executed and that both were legally binding contracts. It is denied that the Sale Agreement continued to bind or obligate CAH in any way from and after CAH's discharge in bankruptcy. All other allegations contained in Paragraph 117 are denied.

118. The agreements are no longer valid or binding, all duties and obligations thereunder having been discharged in bankruptcy.

119. Admitted.

120. Denied.

121. Denied.

122. Denied.

123. Denied.

124. Denied.

125. Denied. Answering further, CAH states that the inclusion of Paragraphs 125 and 131 in the Amended Complaint are disingenuous attempts to drag RCHA, a non-party to the Sale Agreement and the Lease, into Plaintiff's claim for breach of contract. The allegations of these Paragraphs were not pled by Plaintiff in the initial Complaint and were inserted only in efforts to circumvent the arguments of RCHA's Motion to Dismiss.

126. Denied.

127. Denied.

128. Denied. As there has been no breach by any Defendant of the agreements, no cure is required.

129. Denied.

130. Denied.

131. Paragraph 131 states a legal conclusion which requires neither an admission nor a denial. To the extent an Answer is required, CAH denies the allegations.

CLAIM 2: BREACH OF IMPLIED CONTRACT

132. CAH incorporates by reference its responses to the correspondingly numbered paragraphs of Plaintiff's Amended Complaint.

133. Denied.

134. Denied.

135. Denied.

136. Denied.

137. Denied.

138. Denied.

139. Denied.

140. Denied.

CLAIM 3: UNFAIR TRADE PRACTICE

141. CAH incorporates by reference its responses to the correspondingly numbered paragraphs of Plaintiff's Amended Complaint.

142. CAH states that the allegations set forth in Paragraph 142 are legal conclusions to which no response is required. To the extent that a response is required,

CAH denies the allegations.

143. CAH states that the allegations set forth in Paragraph 143 are legal conclusions to which no response is required. To the extent that a response is required, CAH denies the allegations.

144. Denied.

145. Denied.

146. Denied.

147. Denied.

CLAIM 4: TORTIOUS INTERFERENCE WITH CONTRACT

148. CAH incorporates by reference its responses to the correspondingly numbered paragraphs of Plaintiff's Amended Complaint.

149. CAH states that the allegations set forth in Paragraph 149 are legal conclusions to which no response is required. To the extent that a response is required, CAH denies the allegations.

150. CAH states that the allegations set forth in Paragraph 150 are legal conclusions to which no response is required. To the extent that a response is required, CAH denies the allegations.

151. CAH states that the allegations set forth in Paragraph 151 are legal conclusions to which no response is required. To the extent that a response is required, CAH denies the allegations

152. Denied.

153. Denied.

154. Denied.

155. Denied.

156. Denied.

CLAIM 5: THIRD-PARTY BENEFICIARY BREACH OF CONTRACT

157. CAH incorporates by reference its responses to the correspondingly numbered paragraphs of Plaintiff's Amended Complaint.

158. CAH admits that it entered into a management agreement with RCHA and HMC by which RCHA agreed to provide professional, reliable and cost effective management and supervision of the Hospital. CAH denies all other allegations of Paragraph 158.

159. Denied.

160. Denied.

161. Denied.

162. Denied.

163. Denied.

164. CAH denies all allegations not specifically admitted herein.

SECOND DEFENSE

Plaintiff's Amended Complaint fails to state any claim for relief against CAH and Plaintiff's Amended Complaint should, therefore, be dismissed.

FIRST AFFIRMATIVE DEFENSE

Plaintiff was not entitled to injunctive relief since its contractual and other remedies at law are adequate.

SECOND AFFIRMATIVE DEFENSE

Plaintiff was and is not entitled to any injunctive relief which would require the Hospital to remain open or be re-opened, as such was and would be barred by law and contrary to public safety.

THIRD AFFIRMATIVE DEFENSE

Any and all obligations under the Sale Agreement (Exhibit 1 to the Amended Complaint) were discharged in the Chapter 11 bankruptcy proceedings of Defendants CAH and HMC.

FOURTH AFFIRMATIVE DEFENSE

Any damage to Plaintiff was due to and caused by the negligence and/or omissions of Plaintiff, which negligence and/or omissions were the proximate cause of the damage, if any, to Plaintiff.

FIFTH AFFIRMATIVE DEFENSE

Defendant CAH cannot be liable for any of the acts or omissions alleged in Plaintiff's complaint because at all relevant times, it exercised due care in compliance with applicable law.

SIXTH AFFIRMATIVE DEFENSE

To the extent that Plaintiff suffered any detriment, such detriment was caused or contributed to by Plaintiff's acts, omissions or negligence, and any award of damages is, therefore, barred.

SEVENTH AFFIRMATIVE DEFENSE

The damages alleged by Plaintiff, if any, were proximately caused by the

negligence, conduct and liability of other persons or entities. CAH may be held liable only if and to the extent that its particular acts and omissions and not those of others may have caused Plaintiff to be damaged.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff is entitled only to those damages which it may prove are particular to Plaintiff and lacks standing to seek or obtain any award or amount which represents some non-specific damage or injury alleged to have been suffered by the citizens and residents of Yadkin County.

NINTH AFFIRMATIVE DEFENSE

Plaintiff failed to mitigate its alleged damages.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and prayer for relief are barred, in whole or in part, by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and prayer for relief are barred, in whole or in part, by the doctrine of laches.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff's claims and prayer for relief are barred, in whole or in part, by waiver.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims and prayer for relief are barred, in whole or in part, by the doctrine of estoppel.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and requests for relief are barred, in whole or in part, by the doctrine of assumption of risk.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the statute of frauds.

SIXTEENTH AFFIRMATIVE DEFENSE

CAH is entitled to setoff for amounts collected by Plaintiff related to these events, including amounts awarded as damages for civil contempt.

WHEREFORE, having answered the Amended Complaint and asserted defenses, CAH prays the court that:

1. Plaintiff have and recover nothing of CAH and that Plaintiff's action be dismissed with prejudice;

2. CAH have and recover of Plaintiff their expenses and attorney's fees pursuant to Chapter 75 of the North Carolina General Statutes;

3. Plaintiff be taxed with all costs of this action; and

4. For such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED.

COUNTERCLAIMS

Counterclaimant CAH Acquisition Company 10, LLC ("CAH") for its counterclaims against the County of Yadkin (the "County"), states and alleges as follows:

1. CAH is a Delaware limited liability company with its principal place of business in Missouri. At all times materials to this counterclaim, CAH did business in

North Carolina.

2. The County of Yadkin is a political subdivision of the State of North Carolina.

3. Hugh Chatham Memorial Hospital ("Hugh Chatham") is a North Carolina not-for-profit corporation with its principal office in Elkin, North Carolina.

4. Kevin Austin is an individual residing in Yadkinville, North Carolina. At all times relevant hereto, he was the Chairman of the Yadkin County Board of Commissioners and a member of the Board of Trustees of Hugh Chatham. He is hereafter referred to as "Chairman Austin."

5. Blue Management Services, LLC, d/b/a Alliant Management Services ("Alliant"), is a Kentucky limited liability company with its principal office in Louisville, Kentucky. On information and belief, CAH states that Alliant is the manager of Hugh Chatham.

6. John Does and Jane Does are persons whose names are not presently known, but who participated and conspired with the County and above-named persons and entities in the operation of a collective scheme and civil conspiracy to deprive CAH of its right to enjoy the benefits of the business and assets of the Hospital and RCHA of its right to enjoy the benefits of its management relationship with CAH.

7. Hugh Chatham, Alliant, Chairman Austin, John Does and Jane Does are hereafter collectively referred to as the "Co-conspirators."

8. Jurisdiction is based on 28 U.S.C. § 1367 (supplemental jurisdiction) and principles of pendent and ancillary jurisdiction. These claims arise out of the same

transaction and occurrences that are set forth in Plaintiffs' Amended Complaint.

9. Venue is proper in this Court.

RELEVANT AGREEMENTS

10. CAH operated Yadkin Valley Community Hospital (the "Hospital") for five years.

11. In 2010, CAH acquired the business and assets of the Hospital from Hoots Memorial Hospital, Inc. ("Hoots Memorial"), a North Carolina not-for-profit corporation.

12. At all times relevant hereto, CAH leased from the County the real property, building and improvements occupied by the Hospital (the "Premises") pursuant to the Hospital Lease, as amended.

13. The parties—CAH, Hoots Memorial, and the County—memorialized this purchase and lease transaction by entering into the Agreement to Purchase and Lease effective April 22, 2010 ("Purchase Agreement").

14. At closing on May 1, 2010, CAH and the County also entered into a lease covering the Premises ("Hospital Lease").

15. On January 17, 2013, RCHA entered into an agreement with CAH and HMC by which RCHA agreed to provide professional, reliable and cost effective management and supervision of the Hospital ("Management Agreement").

16. The Management Agreement, as amended, carried a term of ten years, which would have expired on in 2023.

17. As compensation for RCHA's services, RCHA would receive a Service Fee, which was correlated, in part, to the financial performance of the Hospital.

18. Under the Management Agreement, RCHA would act as an independent contractor and not as a partner, employee, or legal representative of CAH or HMC.

19. CAH is not a related party to RCHA or HMC.

20. CAH does not have any members of its governing body that overlap with members of the governing bodies and RCHA or HMC.

21. Neither RCHA nor HMC have any voting power or control over CAH's governing body or officers, directors, manager, shareholders, or members.

22. The Hospital Lease carried an initial term of 48 months.

23. CAH and the County signed an amendment to the Hospital Lease ("Second Amendment"), which extended the term until April 30, 2015.

24. In October 2011, CAH entered Chapter 11 Bankruptcy. In the bankruptcy action, the Purchase Agreement and the Guaranty were discharged. The lease was amended and approved by the bankruptcy court.

25. Thereafter, the County and CAH entered into subsequent amended leases. On April 2, 2015, the County and CAH entered into the Third Amended Lease.

CONSPIRACY TO REPLACE CAH WITH HUGH CHATHAM

26. On July 24, 2014, representatives of CAH held a meeting with representatives of the County, including Chairman Austin; David Moxley, Vice-Chairperson of the Yadkin County Board of Commissioners; Edward Powell, Yadkin County Attorney; Aaron Church, then-Yadkin County Manager; and Lisa Hughes, then-Yadkin County Finance Officer.

27. At the July 24, 2014 meeting, the County's representatives stated that the County wanted to replace CAH with another Hospital operator and the County expected CAH to transfer—without compensation—its ownership of the business and assets of the Hospital to the new operator.

28. Upon information and belief, and prior to the July 24, 2014 meeting, the County had secretly selected Hugh Chatham Memorial Hospital ("Hugh Chatham") to replace CAH as Hospital operator without undergoing an RFP process as required by N.C. Gen. Stat. Ann. § 131E-13.

29. Upon information and belief, the County sought to make Hugh Chatham the Hospital operator because Chairman Austin, in addition to being an officer of the County, was a member of the Board of Trustees of Hugh Chatham.

30. On September 4, 2014, representatives of CAH and representatives of the County, including Mr. Austin, Mr. Moxley, Mr. Powell and Mr. Church met.

31. At the September 4, 2014 meeting, Mr. Church said definitively that the County would replace CAH as operator of the Hospital and reiterated that the County expected CAH to transfer—without compensation—its ownership of the business and assets of the Hospital to the new operator.

32. At the September 4, 2014 meeting, a representative of CAH objected, saying that CAH would not transfer its ownership of the business and assets of the Hospital without compensation because CAH had paid for them, but that it would negotiate in good faith for the sale of its ownership of the business and assets of the Hospital to the new operator selected by the County.

33. At the September 4, 2014 meeting, a representative of CAH asked the County if the County was already dealing with another entity to replace CAH as Hospital operator. Mr. Church responded that the County was already dealing with another operator to replace CAH but would not disclose the identity of that entity.

34. On October 6, 2014, CAH sent the County a sale proposal for CAH's ownership of the business and assets of the Hospital.

35. Upon information and belief, the County secretly shared CAH's sale proposal with Hugh Chatham and Alliant Management Services ("Alliant"), which was working on behalf of Hugh Chatham.

36. This unauthorized sharing of CAH's sale proposal violated CAH's specific demand to the County that it not pass along the sale proposal to an undisclosed entity.

37. In December 2014, Louis Vetter of Alliant contacted Shawn Bright, an RCHA employee acting as Hospital CEO, and attempted to discuss Hugh Chatham's potential purchase of CAH's ownership of the business and assets of the Hospital.

38. Mr. Vetter further encouraged Mr. Bright to terminate his employment with RCHA and accept employment with Alliant.

39. At a December 5, 2014 meeting of the County's Board of Commissioners, Ms. Hughes was named County Manager.

40. In December 2014, Mr. Vetter of Alliant, working on behalf of Hugh Chatham, contacted CAH and represented to CAH that the County had selected Hugh Chatham as the new Hospital operator.

41. On January 2, 2015, representatives of CAH participated in a conference

call with Mr. Vetter; Paul Hammes, CEO of Hugh Chatham; and County representatives, including Chairman Austin and Ms. Hughes. The purpose of this call was to work out a mutually agreeable process the parties should follow in negotiating the sale of CAH's ownership of the business and assets of the Hospital to Hugh Chatham.

42. On the January 2, 2015 conference call, a representative of CAH asked Chairman Austin directly if the County had selected Hugh Chatham to be the new operator of the Hospital, and Mr. Austin answered in the affirmative.

43. CAH, HMC and RCHA were unaware of Chairman Austin's blatant conflict of interest, being both the Chairperson of the County's Board of Commissioners and a Member of Hugh Chatham's Board of Trustees.

44. Chairman Austin did not disclose this conflict to CAH, HMC or RCHA.

45. Chairman Austin involved himself in the negotiations of the sale of CAH's ownership of the business and assets of the Hospital to Hugh Chatham, and he did not recuse himself from deliberating, voting or otherwise attempting to influence such transaction. These acts were in violation of N.C. Gen. Stat. Ann. § 14-234.1.

46. Had CAH known of Chairman Austin's blatant conflict of interest, it would not have engaged in negotiations with Hugh Chatham.

47. CAH, Hugh Chatham and the County signed a confidentiality agreement, and negotiations commenced in early January 2015.

DEEP IN NEGOTIATIONS WITH HUGH CHATHAM, THE COUNTY INITIATES A HASTY, ELEVENTH-HOUR RFP

48. On February 16, 2015, Ms. Hughes sent an e-mail message to Mr. Bright

summarizing the terms that the County was offering to Hugh Chatham for lease of the Hospital premises.

49. Strangely, also on February 16, 2015 and without notice to CAH, the County's Board of Commissioners initiated a Request for Proposal ("RFP") pursuant to N.C. Gen. Stat. Ann. § 131E-13 soliciting bids from third-party hospital operators to lease the Hospital premises.

50. The County made these bids due by March 19, 2015—only one month before the Hospital Lease was set to expire.

51. The County's abrupt and unexpected about-face greatly alarmed CAH, which was already—at the County's express instruction—deep in its negotiations with Hugh Chatham for the sale of CAH's ownership of the business and assets of the Hospital.

52. The statements of the County to CAH, including specifically the statements of Chairman Austin, Mr. Powell and Ms. Hughes, representing that the County had already selected Hugh Chatham as the new Hospital operator, and the eleventh-hour RFP, thwarted the transition of the Hospital and made it impossible for CAH to close the sale of CAH's business and assets of the Hospital to a new operator.

53. The County did not engage in a good-faith RFP process but was instead trying to cover its tracks while trying to hand Hugh Chatham the role of Hospital operator.

54. The County directly solicited proposals from five hospital operators and received proposals from three entities: Hugh Chatham, Wake Forest Baptist Medical

Center ("Wake Forest"), and Community Hospital Corporation ("CHC") (a company located in Austin, Texas).

55. The County solicited a bid from CAH, but CAH declined to submit a bid.

56. The County instructed CAH to expand its negotiations to include all three bidders.

57. CAH contacted Wake Forest and received no response.

58. CAH contacted CHC and provided it with due diligence information, but CAH received no further response from CHC.

59. Upon information and belief, the County did not disclose to Wake Forest or CHC that negotiations with Hugh Chatham had been ongoing for months before the County initiated the RFP process.

60. Upon information and belief, the County did not disclose to Wake Forest or CHC the blatant conflict of interest of Chairman Austin, *i.e.*, that he was both the Chairperson of the County's Board of Commissioners and a Member of Hugh Chatham's Board of Trustees.

61. Ms. Hughes shortly thereafter notified CAH that Wake Forest and CHC bidders had withdrawn their proposals.

THE COUNTY'S MISREPRESENTATIONS ABOUT HUGH CHATHAM, MISHANDLING OF THE RFP PROCESS AND REFUSAL TO COOPERATE SENDS THE HOSPITAL INTO TURMOIL

62. Because the Hospital Lease was to expire on April 30, 2015, CAH had repeatedly pleaded with the County for a brief extension to facilitate the sale, but the County simply refused.

63. The Worker Adjustment and Retraining Notification (WARN) Act required CAH, as an employer, to provide notice 60 days before the shutdown of its business. The WARN notice must be given to the affected employees and to the appropriate unit of local government.

64. From December 2014 to February 2015, CAH had repeatedly cautioned the County that CAH was obligated to issue the WARN notice unless transition to a new operator occurred before the Hospital Lease terminated or a lease extension was agreed to by CAH and the County.

65. Further, CAH had cautioned the County that the giving of the WARN notice would likely have a materially adverse effect on the Hospital's clinical operations and financial viability.

66. With the Hospital Lease expiring on April 30, 2015 and the County rejecting any (however brief) extension of the Hospital Lease, CAH waited until the final possible day in hopes the County would compromise to obviate the necessity of giving the WARN notice.

67. On February 28, 2015, CAH had no option but to give the WARN notice to its employees and to the County.

THE THIRD AMENDMENT TO THE HOSPITAL LEASE WAS ENTERED INTO SOLELY FOR THE PURPOSE OF TRANSITIONING FROM CAH TO HUGH CHATHAM

68. CAH and Hugh Chatham agreed on the economic terms for the sale. On March 24, 2015, Hugh Chatham sent an executed, non-binding term sheet ("Term Sheet") to CAH, which CAH signed and returned on March 26, 2015.

69. The Term Sheet anticipated the sale of CAH's hospital business to Hugh Chatham would occur by August 1, 2015 and made the sale expressly contingent upon Hugh Chatham first entering into a lease for the Premises with the County.

70. Only after the term sheet was signed did the County finally agree to negotiate a lease extension. Ms. Hughes told CAH the purpose of the lease extension was "to facilitate the transaction between [CAH] and any prospective purchaser."

71. On April 2, 2015, CAH and the County extended the Hospital Lease to end on July 31, 2015 (the "Third Amendment").

72. Suddenly, and without any stated reason, Hugh Chatham stopped communicating with CAH despite repeated inquiries made by CAH to Hugh Chatham.

73. Hugh Chatham ultimately provided CAH with an April 16, 2015 letter sent by Hugh Chatham to Ms. Hughes.

74. The April 16, 2015 letter informed the County that Hugh Chatham had decided to withdraw from the RFP process.

75. The April 16, 2015 letter provided no reason for the withdrawal other than the Hugh Chatham Board of Trustees "ha[d] concerns with respect to [Hugh Chatham's] ability to fully meet the County's expectations, both in the near and longer term, in operating the critical access hospital in Yadkinville."

76. Upon information and belief, Hugh Chatham after its due diligence no longer believed that a critical access hospital was viable in Yadkin County, on terms demanded by the County.

77. Thereafter, Hugh Chatham terminated the Term Sheet with CAH.

78. With the withdrawal of Hugh Chatham—the last prospective purchaser of CAH's ownership of the business and assets of the Hospital—and the County's headstrong resolve to oust CAH, the Hospital's future ability to operate looked bleak.

79. Key personnel were justifiably concerned about the uncertainty of continued operations and left the Hospital.

80. On April 21, 2015, the Hospital's Advisory Board met with Mr. Austin in attendance. The discussion dealt with the abrupt, unexpected withdrawal of Hugh Chatham and the continuing deterioration of the Hospital's financial clinical operations following the WARN notice.

81. At the April 21, 2015 meeting, CAH disclosed to the County that the Hospital might be forced to close unless conditions changed.

82. By early May 2015, the Hospital had lost a physician's assistant, a certified registered nurse practitioner, the patient financial services (PFS) director, and a clinic manager. One physician was looking for another practice situation, and another physician had opened an outside practice location.

83. The lack of a new Hospital operator and the County's refusal to negotiate a long-term lease with CAH made it nearly impossible to recruit experienced and competent staff to replace those leaving the Hospital.

84. On May 4, 2015, CAH put "the County on notice that if clinical and patient support operations deteriorate further, there is a reasonable likelihood that the hospital will not be able to remain open for business until July 31st."

85. CAH made a final, good-faith attempt to rescue the Hospital by inviting

negotiations with the County for CAH's long-term lease of the Premises "coupled with the same package of economic incentives that the County was offering to Hugh Chatham."

86. In response, the County refused to offer CAH what it had offered Hugh Chatham, and instead, the County tendered a "take-it-or-leave-it" offer conditioned on CAH's immediate acceptance.

87. While the Second Amendment had set the annual rent for the Premises at zero dollars (which continued in the Third Amendment), Plaintiff demanded lease payments of $650,000 per year in its "take-it-or-leave-it" offer.

88. CAH rejected the outlandish lease terms demanded by Plaintiff and requested that the parties participate in a negotiation. CAH proposed engaging a third-party appraiser to determine a "fair market value" of the rent for the Premises.

89. Should the parties be unable to reach an agreement for a long-term lease extension, CAH offered, in the alternative, to negotiate an outright sale of ownership of the Hospital business and assets to the County based on the economic terms stated in the Term Sheet with Hugh Chatham.

90. The County rejected both of CAH's counteroffers and issued a press release attacking CAH and stating: "It is obvious that now is the time for the Board of Commissioners to seek other solutions to the healthcare needs of our citizens."

91. In an email from Ms. Hughes to CAH, she acknowledged the County's altered its plans for the Hospital. She said: "The County will move forward with another RFP process for medical services that may not include a critical access hospital."

PATIENT SAFETY CONCERNS, STAFF FLIGHT, PATIENT ATTRITION AND FINANCIAL LOSSES FORCE HOSPITAL TO CLOSE

92. On May 8, 2014, CAH informed the County that the Hospital was losing over $20,000 per day. CAH attributed these losses to the WARN notice and a generalized community uncertainty about the hospital's future. The Hospital had suffered a "steep decline in inpatient census from 10 patients to one."

93. CAH again cautioned Plaintiff that CAH could not "allow losses of this magnitude to continue and it is becoming more and more unlikely that the hospital will be able to remain open until July 31."

94. On May 8, 2015, CAH authorized and directed RCHA to discontinue the clinical operations and close the Hospital at such time as RCHA reasonably determined that patient safety could no longer be ensured due to deterioration of the financial and clinical condition of the Hospital.

95. On May 14, 2015, CAH provided to Ms. Hughes all of the documents required "to effectuate the transfer of all licenses and provider numbers" of the Hospital to the County.

96. Those documents included the so-called "CHOW" application applicable to the CMS provider number.

97. CAH offered to make its representatives available to provide assistance to the County's hospital consultant.

98. CAH informed the County that it wanted to have the CHOW application signed and ready to file with CMS no later than the close of business on Friday, May 22,

2015.

99. Subsequently, County Attorney Powell advised CAH: "It is not Yadkin County's intention to accept the existing provider agreement."

100. On May 12, 2015, Mr. Bright sent an e-mail message to Jay Kennedy, Hospital Program Manager from the North Carolina Office of Rural Health and Community Care.

101. In the May 12, 2015 email, Mr. Bright explained: "The hospital operations are in jeopardy . . . The hospital is probably two weeks from closing unless something is resolved, we simply cannot afford that kind of loss and there is currently no end in sight."

102. Mr. Kennedy responded to Mr. Bright that he had been in contact with Ms. Hughes about the situation and had left another voicemail with her, to which she had not yet responded.

103. On May 14, 2015, Mr. Bright followed up his conversation with Mr. Kennedy with an email to Azzie Conley, Section Chief for Acute and Home Care Licensure and Certification Section of the North Carolina Department of Health and Human Services.

104. In the May 14, 2015 email, Mr. Bright said: "As it stands we will likely have to surrender operations to the County Commissioners on or before May 23rd. At that point they will close the hospital."

105. Thereafter, during the third week of May 2015, RCHA made its determination that because of the continuing deterioration of the Hospital's operations, patient safety could no longer be ensured.

106. On May 21, 2015, CAH 10 sent its employees another notice stating that the Hospital would close.

107. On May 22, 2015, the Hospital sent a letter via email and U.S. Mail to the North Carolina Department of Health announcing the Hospital's immediate closure. The Hospital explained, "[I]t will no longer be possible to operate the Hospital in a manner that properly serves the community and meets the licensure requirements of the State of North Carolina."

NEGOTIATIONS CONTINUE BETWEEN THE COUNTY AND HUGH CHATHAM FOR HUGH CHATHAM TO LEASE THE PREMISES BUT NOT TO OPERATE A CRITICAL ACCESS HOSPITAL

108. Upon information and belief, in May 2015, the County contacted Hugh Chatham and requested that Hugh Chatham rescind its letter of withdrawal and negotiate with the County to lease the Premises for a purpose other than operating a critical access hospital.

109. In turn, Hugh Chatham rescinded its letter of withdrawal.

110. On or around May 18, 2015, the County's Board of Commissioners met and accepted the rescission of Hugh Chatham's letter of withdrawal.

111. At the May 18, 2015 meeting, "Chairman Kevin Austin announced that since he was a member of the Hugh Chatham Memorial Hospital Board of Trustees, he asked the [County's] Board [of Commissioners] to allow him to recuse himself from any vote concerning the matter," and "[t]he [County's] Board of Commissioners voted to recuse Chairman Austin . . . ."

112. In the entire time that the County had been in discussions and negotiations

with Hugh Chatham to take over the Premises, from at least September 2014 until May 18, 2015, this was the first time that Mr. Austin had sought to recuse himself from a meeting of the County's Board of Commissioners where the Hospital or the Premises was discussed.

113. Upon information and belief, the County and Hugh Chatham have continued their negotiations for Hugh Chatham to lease the Premises.

114. The County has initiated the underlying lawsuit and contempt proceeding, through which the County demands ownership of CAH's personal property without compensation to CAH.

COUNTERCLAIM NO. 1 – TORTIOUS INFERENCE WITH CONTRACT

115. The Management Agreement was a valid contract between CAH, RCHA and HMC.

116. The County knew of the Management Agreement and CAH's role as Hospital operator.

117. The County intentionally forced CAH out as the Hospital operator, thereby causing the termination of CAH's Management Agreement with RCHA.

118. The County's actions were part of an improper scheme to replace CAH as Hospital operator with Hugh Chatham and to transfer CAH's ownership of the business and assets of the Hospital to Hugh Chatham without adequate compensation to CAH.

119. This scheme was motivated by Chairman Austin's blatant and undisclosed conflict of interest as both the Chairperson of the Yadkin County Board of Commissioners and a Member of the Hugh Chatham Board of Trustees.

120. The County acted with malice and for a reason not reasonably related to the protection of a legitimate business interest.

121. As a result of the County's actions, CAH suffered actual damage, including lost Service Fees.

122. The County waived governmental immunity for these claims by purchasing liability insurance coverage for acts or omissions occurring in the exercise of a governmental function.

COUNTERCLAIM NO. 2 – CIVIL CONSPIRACY

123. The County, Chairman Austin and Hugh Chatham conspired to replace CAH as Hospital operator with Hugh Chatham and to transfer CAH's ownership of the business and assets of the Hospital to Hugh Chatham without adequate compensation to CAH.

124. In furtherance of the conspiracy, the County and Co-conspirators engaged in tortious inference with contract against CAH by interfering with its Management Agreement with RCHA and HMC.

125. In furtherance of the conspiracy, the County and Chairman Austin violated N.C. Gen. Stat. Ann. § 14-234.1.

126. In furtherance of the conspiracy, the County violated N.C. Gen. Stat. Ann. § 131E-13.

127. The County and Co-conspirators each took actions in furtherance of the conspiracy, including but not limited to:

a. Despite having not engaged in an RFP process, Hugh Chatham

contacted CAH and represented to CAH that the County had selected Hugh Chatham to be the new Hospital operator;

b. Despite having not engaged in an RFP process, the County ordered CAH to negotiate exclusively with Hugh Chatham for the sale of CAH's ownership of the business and assets of the Hospital;

c. Despite having not engaged in an RFP process, Hugh Chatham and the County signed a confidentiality agreement with CAH to share proprietary information regarding the Hospital;

d. Despite having not engaged in an RFP process, Hugh Chatham began negotiations with CAH for the sale of its ownership of the business and assets of the Hospital;

e. Kevin Austin refused and failed to disclose to CAH his blatant conflict of interest as both the Chairperson of the Yadkin County Board of Commissioners and a Member of the Hugh Chatham Board of Trustees;

f. Despite his blatant conflict of interest and without disclosing it, Kevin Austin confirmed to CAH that it was to negotiate exclusively with Hugh Chatham the sale of CAH's ownership of the business and assets of the Hospital;

g. Despite his blatant conflict of interest and without disclosing it, Kevin Austin participated actively in the negotiation of the sale to Hugh Chatham of CAH's ownership of the business and assets of the Hospital; and

h. Despite his blatant conflict of interest and without disclosing it, Kevin Austin refused to recuse himself from meetings of the Yadkin County

Board of Commissioners where matters relating to the sale of CAH's ownership of the business and assets of the Hospital to Hugh Chatham and the lease by the County of the premises to Hugh Chatham were discussed and voted on.

128. The conspiracy deprived CAH of the opportunity either to secure a timely sale of its ownership of the business and assets of the Hospital to a new Hospital operator or to negotiate a long-term lease for CAH to continue as Hospital operator.

129. As a result of the conspiracy, CAH suffered actual damage, including lost Service Fees.

130. The County waived governmental immunity for these claims by purchasing liability insurance coverage for acts or omissions occurring in the exercise of a governmental function.

COUNTERCLAIM NO. 3 – BREACH OF CONTRACT TO NEGOTIATE IN GOOD FAITH

131. The responses and allegations contained in the foregoing Paragraph Numbers 1-130 are realleged and incorporated by reference as if fully set forth herein.

132. By its acts and omissions as alleged herein, Plaintiff breached its contract with CAH to negotiate, in good faith, an agreement with a successor operator for the Hospital, thereby permitting CAH to sell the assets utilized in the operation of the Hospital to a successor, or to enter into an agreement for CAH to continue to operate the Hospital. Without limitation, such acts and omissions included the following:

a. Entering into the Third Amendment to the Hospital Lease for the stated and agreed purpose of allowing the County to enter into an agreement

with a new operator and for CAH to sell its hospital assets to the new operator,

b. Asserting that the County had selected Hugh Chatham as the successor operator and instructing CAH to negotiate exclusively with Hugh Chatham as the successor hospital operator even though the County had failed to follow the RFP process mandated by N.C. Gen. Stat §13-131,

c. Refusing to enter into a short-term extension of the Hospital Lease with CAH before CAH was obligated by statute to issue the WARN notice,

d. Failing to enter into a binding agreement with Hugh Chatham or other successor operator after CAH had agreed to economic terms with Hugh Chatham and the County and CAH entered into the Third Amendment to the Hospital lease with the stated and agreed purpose of facilitating the transfer to a new operator,

e. Refusing and failing to enter into an agreement with CAH to continue to operate the Hospital on the same terms as those agreed upon by the County with Hugh Chatham,

f. Upon information and belief, sharing CAH's confidential information about the Hospital, including the sale proposal with Alliant and Hugh Chatham despite CAH's specific demand to not share the information with any other entity, including a potential new operator of the Hospital.

g. Failing to disclose Chairman Austin's conflict of interest between his roles as Chairman of the County Commissioners and as a member of the Board of Trustees of Hugh Chatham.

133. As a result of the acts and omissions of the County in breach of its contract to negotiate in good faith, CAH suffered actual damages in an amount in excess of $75,000.00 as will be proven at trial.

WHEREFORE, on its counterclaims, CAH prays the court that:

1. CAH have and recover judgment against Defendant in an amount to be determined by a jury in the trial of this action but in any event in excess of the sum of $75,000;

2. Costs awarded against Counterclaim Defendant;

3. CAH have and recover its reasonable attorneys' fees as permitted by law; and

4. CAH have such other and further relief as may be deemed just and proper.

This the 27th day of November, 2015.

HAGAN BARRETT & LANGLEY PLLC

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **ANSWER AND COUNTERCLAIMS OF DEFENDANT CAH ACQUISITION COMPANY 10 LLC** using the CM/ECF system, which will send notification of such filing to:

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This the 27th day of November, 2015.

/s/ J. Alexander S. Barrett
J. Alexander S. Barrett