

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

NOVANT HEALTH, INC.,  
and  
COMMUNITY HEALTH SYSTEMS, INC.,

Defendants.

Case No. 5:24-cv-00028

**ANSWER AND DEFENSES OF DEFENDANT COMMUNITY HEALTH SYSTEMS**

Community Health Systems, Inc. (“CHS”), by and through its undersigned counsel, Gibson Dunn & Crutcher LLP, hereby answers and asserts defenses to the claims and allegations made by the Federal Trade Commission (“FTC” or “Commission”) in its Complaint for a Temporary Restraining Order and Preliminary Injunction (“Complaint”).

**DEFENDANT CHS’S INTRODUCTION**

CHS has just one acute care hospital in the entire state, Lake Norman Regional Medical Center. (CHS converted its other North Carolina hospital, Davis Regional Medical Center, to a behavioral health facility in 2022.) As such, it lacks the provider network, patient base, and investment capabilities to deliver the breadth of services, patient access and experience, and quality of care that an integrated healthcare system is able to offer. As a result, Lake Norman Regional is struggling. Although Lake Norman Regional is licensed for 123 beds, its average daily inpatient census is just 39, for an occupancy rate of just 32 percent. Its quality scores are declining, outliers within the CHS network of hospitals and, on many quality measures, lower

performing nationally. Similarly, Lake Norman Regional is not a meaningful competitive constraint on Novant, which faces intense competition from many directions, including Atrium Health—the dominant healthcare system in the Charlotte area, which has broken ground on a brand new hospital just 7 miles from Lake Norman Regional.

The proposed transaction will not only cause no harm to competition, but—more importantly—it will improve the quality of care at Lake Norman Regional and enhance the intense competition between Atrium, Novant, and other health systems in the Charlotte area, resulting in procompetitive effects for payors, patients, and the community. Unlike CHS, Novant has a complementary network of healthcare facilities and providers and the capability to invest and revitalize Lake Norman Regional. The transaction will thus enable Novant to turn around a struggling hospital in a way that CHS, which lacks any established network in North Carolina, cannot. The result will be enhanced competition, improved quality of care for patients, greater resources for physicians and other healthcare providers, and reduced costs through improved coordination across the continuum of care.

#### **GENERAL RESPONSE REGARDING THE ENTITY NAMED IN THE COMPLAINT**

The Complaint was issued to Community Health Systems, Inc. However, Community Health Systems, Inc. is a publicly-traded holding company with no assets or employees. As indicated in the Asset Purchase Agreement, the seller entity that is executing the transaction at issue is CHS/Community Health Systems, Inc., an affiliate of Community Health Systems, Inc. CHS/Community Health Systems, Inc. answers this Complaint on behalf of itself and Community Health Systems, Inc. For ease of reference, however, Community Health Systems, Inc. will be referred to as “CHS” throughout this Answer and shall necessarily include CHS/Community Health Systems, Inc.

## **RESPONSE TO INDIVIDUAL FACTUAL ALLEGATIONS**

Numbered paragraphs below correspond to the like-numbered paragraphs in the Complaint. Except as specifically admitted, CHS denies the allegations in the Complaint.

1. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations regarding Novant's size relative to other hospital systems in the vaguely defined areas in the first sentence of Paragraph 1 of the Complaint, and on that basis denies those allegations. CHS admits that it entered an agreement with Novant through which Novant would acquire CHS's Lake Norman Regional and Davis facilities in North Carolina. CHS denies the remaining allegations in Paragraph 1 of the Complaint.

2. CHS admits that Novant operates Novant Huntersville and that Lake Norman Regional is located roughly 11 miles north of Novant Huntersville. The last sentence of Paragraph 2 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations. CHS denies the remaining allegations in Paragraph 2 of the Complaint.

3. Paragraph 3 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

4. Paragraph 4 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

5. The first three sentences of Paragraph 5 of the Complaint contain legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations. CHS admits that the fifth and sixth sentences of Paragraph 5 of the Complaint seem to refer to internal CHS documents but denies the Commission's

characterization of the statements in those documents. CHS denies the remaining allegations in Paragraph 5 of the Complaint.

6. The first and last sentences of Paragraph 6 of the Complaint contain legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations. CHS denies the remaining allegations in Paragraph 6 of the Complaint.

7. Paragraph 7 of the Complaint contains legal conclusions, and therefore no response is required. CHS further states that it lacks knowledge or information sufficient to form a belief as to the Commission's beliefs about its case, which have no bearing on the merits of this proceeding, and on that basis denies those allegations.

8. CHS admits that the parties have stipulated to entry of a temporary restraining order, which is the best source of the actual contents therein and, therefore, no further response is required. CHS further denies the allegation that the stipulated order will "protect competition."

9. Paragraph 9 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies the allegations.

10. Paragraph 10 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies the allegations.

11. The Commission's recitation of a statutory provision is not a factual allegation, and therefore no response is required to Paragraph 11 of the Complaint. To the extent a response is required, CHS denies that the FTC has a valid claim under Section 13(b) of the FTC Act.

12. Paragraph 12 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies the allegations.

13. Paragraph 13 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies the allegations.

14. CHS admits that it transacts business in the Western District of North Carolina. The remainder of Paragraph 14 of the Complaint contains legal conclusions, and therefore no response is required.

15. Paragraph 15 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS admits that it has assets in Iredell County.

16. Paragraph 16 contains legal conclusions, and therefore no response is required.

17. CHS admits that Novant is a non-profit healthcare provider that operates hospitals in North Carolina. CHS admits that Novant's headquarters are located in Winston-Salem, North Carolina. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations in Paragraph 17 of the Complaint, and on that basis denies those allegations.

18. CHS admits that Novant operates hospitals in North Carolina, including one known as Novant Huntersville. CHS admits that Novant Huntersville is located in Mecklenburg County and is approximately 14 miles north of certain parts of Charlotte. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations in Paragraph 18 of the Complaint, and on that basis denies those allegations.

19. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in Paragraph 19 of the Complaint, and on that basis denies those allegations.

20. CHS admits that it is a for-profit healthcare system and that it is the corporate parent of various indirect subsidiaries that operate 71 acute-care hospitals and more than 1,000 sites of care across 15 states. CHS admits the allegations contained in the second sentence of

Paragraph 20 of the Complaint. CHS admits that it reported approximately \$12.2 billion in net operating revenues in 2022 across its organization.

21. CHS admits that its indirect subsidiaries operate two hospitals in North Carolina known as Lake Norman Regional and Davis. The second sentence of Paragraph 21 of the Complaint contains or relies upon legal conclusions about the so-called “Eastern Lake Norman Area,” and therefore no response is required. CHS admits that Lake Norman Regional is a 123-bed hospital in Mooresville, which is roughly 25 miles north of certain parts of Charlotte, and that it has earned profits at points throughout its history. CHS admits that Davis is a hospital in Statesville, which is roughly equidistant between certain parts of Charlotte and certain parts of Winston-Salem. CHS admits that in 2022, Davis ceased offering inpatient GAC services and was converted to a dedicated behavioral health hospital. CHS denies the remaining allegations in Paragraph 21 of the Complaint.

22. CHS admits that it entered into an Asset Purchase Agreement with Novant on February 28, 2023, which is the best source of the actual contents therein and, therefore, no further response is required.

23. Paragraph 23 of the Complaint contains legal conclusions, and therefore no response is required.

24. Paragraph 24 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

25. Paragraph 25 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

26. Paragraph 26 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

27. Paragraph 27 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

28. Paragraph 28 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

29. Paragraph 29 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

30. CHS admits that certain surgeries, MRI scans, and mammograms can be performed in an outpatient setting in certain circumstances. The remaining allegations in Paragraph 30 of the Complaint contain or rely upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

31. Paragraph 31 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

32. Paragraph 32 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

33. Paragraph 33 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

34. Paragraph 34 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

35. Paragraph 35 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies the allegations on the basis that the so-called “Eastern Lake Norman Area” is not a relevant geographic area for purposes of this action.

36. Paragraph 36 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies the allegations on the basis that the so-called “Eastern Lake Norman Area” is not a relevant geographic area for purposes of this action.

37. CHS denies the allegations contained in Paragraph 37 of the Complaint.

38. CHS denies the allegations in Paragraph 38 of the Complaint on the basis that the so-called “Eastern Lake Norman Area” is not a relevant geographic area for purposes of this action, and that the map excludes other nearby hospitals that compete against the hospitals shown on the map.

39. CHS denies the allegations contained in Paragraph 39 of the Complaint.

40. CHS denies the allegations in Paragraph 40 of the Complaint.

41. CHS denies the allegations in Paragraph 41 of the Complaint.

42. CHS lacks information or knowledge to form a belief regarding the allegations in Paragraph 42 of the Complaint to the extent that they relate to the knowledge of Novant, and on that basis denies those allegations. CHS denies the remaining allegations in Paragraph 42 of the Complaint.



43. Paragraph 43 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

44. Paragraph 44 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

45. Paragraph 45 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

46. Paragraph 46 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

47. Paragraph 47 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

48. Paragraph 48 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

49. Paragraph 49 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

50. Paragraph 50 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

51. Paragraph 51 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

52. Paragraph 52 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

53. Paragraph 53 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

54. CHS admits that hospitals compete for inclusion in insurers' health plan provider networks, as well as to attract patients. CHS denies the remaining allegations in Paragraph 54 of the Complaint.

55. CHS admits that it negotiates with insurers to become an in-network provider in health plans, and that it becomes an in-network provider where it is able to enter into a contract with an insurer. CHS admits that the reimbursement rates for services rendered to a health plan's members are a component of these negotiations, including for different types of contracts. CHS lacks knowledge or information sufficient to form a belief as to other hospitals, and on that basis denies those allegations. CHS denies the remaining allegations in Paragraph 55 of the Complaint.

56. The allegations in Paragraph 56 of the Complaint are vague and undefined, and therefore subject to different interpretations. On that basis, CHS denies the allegations in Paragraph 56 of the Complaint.

57. CHS admits that in-network status can be one factor in attracting a health plan's members to a hospital. CHS denies the remaining allegations in Paragraph 57 of the Complaint.

58. CHS denies the allegations in Paragraph 58 of the Complaint.

59. CHS denies the allegations in Paragraph 59 of the Complaint.

60. CHS denies the allegations in Paragraph 60 of the Complaint.

61. CHS admits that it sometimes competes on non-price features and by seeking to persuade physicians to refer or admit patients to its facility. CHS denies the remaining allegations in Paragraph 61.

62. CHS denies the allegations in Paragraph 62 of the Complaint.

63. CHS denies the allegations in Paragraph 63 of the Complaint.

64. CHS denies the allegations in Paragraph 64 of the Complaint.

65. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in Paragraph 65 of the Complaint, and on that basis denies those allegations.

66. CHS denies the allegations in Paragraph 66 of the Complaint.

67. The allegations in Paragraph 67 of the Complaint are based upon the premise that the so-called “Eastern Lake Norman Area” is a relevant geographic market that can be isolated from other areas for purposes of analyzing competition. CHS denies that premise, and on that basis denies the allegations in Paragraph 67 of the Complaint.

68. CHS denies the allegations in Paragraph 68 of the Complaint.

69. CHS denies the allegations in Paragraph 69 of the Complaint.

70. CHS denies the allegations in Paragraph 70 of the Complaint.

71. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the second sentence of Paragraph 71, and on that basis denies those allegations. CHS denies the remaining allegations in Paragraph 71 of the Complaint.

72. The first and third sentences of Paragraph 72 of the Complaint contain or rely upon legal conclusions, and therefore no response is required. To the extent a response is

required, CHS denies those allegations. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the second sentence in Paragraph 72 of the Complaint, and on that basis denies those allegations. CHS denies the remaining allegations in Paragraph 72 of the Complaint.

73. CHS denies the allegations in Paragraph 73 of the Complaint.

74. CHS admits that it sometimes competes on non-price factors for inclusion in provider networks. CHS denies the remaining allegations in Paragraph 74 of the Complaint.

75. CHS denies the allegations contained in Paragraph 75 of the Complaint.

76. CHS admits that the second, third, and last sentences of Paragraph 76 of the Complaint seem to refer to internal CHS documents but denies the Commission's characterization of those documents. CHS denies the remaining allegations in Paragraph 76 of the Complaint.

77. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the first two sentences of Paragraph 77 of the Complaint, and on that basis denies those allegations. The last sentence of Paragraph 77 of the Complaint contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

78. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the first sentence of Paragraph 78 of the Complaint, and on that basis denies those allegations. The remaining allegations in Paragraph 78 of the Complaint contain or rely upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

79. CHS admits that Iredell Memorial is a hospital located in Statesville, which is roughly a 20- to 30-minute drive north of certain parts of Mooresville, Cornelius, and Huntersville. CHS denies the remaining allegations in Paragraph 79 of the Complaint.

80. Paragraph 80 contains or relies upon legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

81. CHS denies the allegations in Paragraph 81 of the Complaint.

82. CHS admits that it has received capital investments and has invested in its healthcare system and facilities at certain points in its history. CHS lacks knowledge or information sufficient to form a belief as to Novant's investments. CHS admits that the last sentence of Paragraph 82 of the Complaint seems to refer to an internal CHS document but denies the Commission's characterization of that document. CHS denies the remaining allegations in Paragraph 82 of the Complaint.

83. CHS admits that Paragraph 83 of the Complaint seems to refer to internal CHS documents but denies the Commission's characterization of those documents. CHS denies any remaining allegations in Paragraph 83 of the Complaint.

84. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the first three sentences in Paragraph 84 of the Complaint, and on that basis denies those allegations. CHS admits that the last sentence in Paragraph 84 of the Complaint seems to refer to an internal CHS document but denies the Commission's characterization of the document. CHS denies any remaining allegations in Paragraph 84 of the Complaint.

85. CHS admits that the first, second, and last sentences in Paragraph 85 of the Complaint seem to refer to an internal CHS document but denies the Commission's

characterization of the document. CHS denies the remaining allegations in Paragraph 85 of the Complaint, including the statement that Lake Norman Regional “nearly doubled its hours of heart attack coverage, added cardiologists to its staff, and implemented measures to increase referrals to its own cardiologists instead of cardiologists employed by other hospitals.”

86. CHS denies the allegations in the first two sentences of Paragraph 86 of the Complaint as they pertain to Lake Norman Regional. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the first two sentences of Paragraph 86 of the Complaint as they pertain to Novant Huntersville, and on that basis denies those allegations. CHS admits that the third and fourth sentences of Paragraph 86 of the Complaint seem to refer to an internal CHS document but denies the Commission’s characterization of the document. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations in Paragraph 86 of the Complaint, and on that basis denies those allegations.

87. CHS denies the allegations in Paragraph 87 of the Complaint.

88. CHS admits that Lake Norman Regional sometimes seeks to recruit physicians as one aspect of competition with Novant and other hospitals. CHS denies the remaining allegations in Paragraph 88 of the Complaint.

89. CHS admits that it sometimes seeks physician referrals as one aspect of competition with Novant and other hospitals and sometimes tracks data about physician referrals that stay within their respective hospital systems. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations in Paragraph 89, including those allegations pertaining to Novant, and on that basis denies those allegations.

90. CHS lacks knowledge or information sufficient to form a belief as to Novant's purported plans, and on that basis denies those allegations. CHS denies the remaining allegations in Paragraph 90 of the Complaint.

91. CHS denies the allegations in Paragraph 91 of the Complaint. CHS further states that Paragraph 91 of the Complaint contains legal conclusions, and therefore no response is required.

92. CHS denies the allegations in Paragraph 92 of the Complaint.

93. The Commission's characterization of North Carolina state law is not a factual allegation, and therefore no response is required. CHS denies the remaining allegations in Paragraph 93 of the Complaint.

94. CHS lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 94 of the Complaint about the internal views of Atrium or any unidentified "other healthcare systems," and on that basis denies those allegations. CHS denies the remaining allegations in Paragraph 94 of the Complaint.

95. CHS lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 95 of the Complaint, and on that basis denies those allegations.

96. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in Paragraph 96 of the Complaint, and on that basis denies those allegations.

97. CHS denies the allegations in Paragraph 97 of the Complaint. CHS further states that Paragraph 97 of the Complaint contains legal conclusions, and therefore no response is required.

98. CHS lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the first sentence of Paragraph 98 of the Complaint, and on that basis denies those allegations. CHS denies any remaining allegations in Paragraph 98 of the Complaint.

99. Paragraph 99 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

100. Paragraph 100 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

101. Paragraph 101 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

102. Paragraph 102 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

103. Paragraph 103 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

104. Paragraph 104 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

105. Paragraph 105 of the Complaint contains legal conclusions, and therefore no response is required. To the extent a response is required, CHS denies those allegations.

### **CHS'S AFFIRMATIVE DEFENSES**

CHS asserts the following affirmative defenses, without assuming the burden of proof for any defense that would otherwise rest with the Commission.

#### **FIRST DEFENSE**

The Complaint fails to state a claim upon which relief can be granted.



**SECOND DEFENSE**

The relief sought is contrary to the public interest.

**THIRD DEFENSE**

The alleged relevant service market fails as a matter of law.

**FOURTH DEFENSE**

The alleged relevant geographic market fails as a matter of law.

**FIFTH DEFENSE**

The Complaint fails to allege any plausible harm to competition or plausible harm to consumers or consumer welfare.

**SIXTH DEFENSE**

The relief sought is contrary to the balance of equities.

**SEVENTH DEFENSE**

New entry and expansion by competitors can be timely, likely, and sufficient, and such entry will ensure that there will be no harm to competition, patients and consumers, or consumer welfare.

**EIGHTH DEFENSE**

The insurers and other payors at issue in the Complaint have tools and alternatives to ensure that they receive competitive pricing and terms for the products and services at issue in the Complaint.

**NINTH DEFENSE**

The Proposed Transaction is procompetitive and will result in substantial procompetitive benefits, including but not limited to merger-specific efficiencies, synergies, quality improvements, increases in patient health outcomes and patient satisfaction, investments in the

acquired facilities, restoration of emergency services in the Statesville, NC area, cost-savings, innovation, and other procompetitive efficiencies that will directly increase the consumer value proposition in the Charlotte area and North Carolina as a whole. These procompetitive benefits outweigh any and all purported anticompetitive effects of the Proposed Transaction.

#### **TENTH DEFENSE**

The post-transaction market shares and HHI calculations alleged in the Complaint overstate current and future competition between the parties, the competitive effects of the Proposed Transaction, and any alleged harm.

#### **ELEVENTH DEFENSE**

CHS asserts the weakened competitor and/or flailing firm defenses. For this reason, among others, the Proposed Transaction is procompetitive and will directly benefit patients, including those in the most vulnerable areas of the Charlotte area.

#### **TWELFTH DEFENSE**

The FTC's administrative proceedings are invalid because the structure of the Commission as an independent agency that wields executive power while limiting the ability of the head of the executive branch to remove the Commissioners and Administrative Law Judge violates Article II of the U.S. Constitution and the doctrine of separation of powers.

#### **THIRTEENTH DEFENSE**

The FTC's administrative proceedings are invalid because adjudication of the Commission's Complaint by an Administrative Law Judge and the Commission itself violates Article III of the U.S. Constitution and the doctrine of separation of powers.

#### **FOURTEENTH DEFENSE**

The Commission's procedures and its administrative proceedings violate CHS's right to due process under the Due Process Clause of the Fifth Amendment.

#### **FIFTEENTH DEFENSE**

The Commission's procedures give unfettered discretion to the FTC to arbitrarily subject CHS to administrative proceedings in addition to, or in lieu of, proceedings before an Article III judge in violation of CHS's right to Equal Protection under the Fifth Amendment and the non-delegation doctrine.

#### **DEFENSES INCORPORATED BY REFERENCE**

CHS incorporates by reference the affirmative and other defenses put forth by Novant in its Answer to the Commission's Complaint.

#### **RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES**

CHS has not knowingly or intentionally waived any applicable defenses. CHS reserves the right to assert and rely upon other applicable defenses as they become available or apparent to CHS throughout the course of this action. CHS reserves the right to amend, or seek to amend, its answer or affirmative defenses.

WHEREFORE, CHS respectfully requests that the Court:

- a. Dismiss the Complaint with prejudice;
- b. Deny the Complaint's requested relief;
- c. Award costs incurred in defending this action to Defendants; and
- d. Award such other and further relief as the Court may determine is appropriate, just, and proper.

Dated: February 8, 2024

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Michael J. Perry

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