

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

Novant Health, Inc.,
a corporation,

and

Community Health Systems, Inc.,
a corporation.

Docket No. 9425

ANSWER AND DEFENSES OF RESPONDENT NOVANT HEALTH, INC.

Pursuant to Rule 3.12 of the Federal Trade Commission (the “FTC” or the “Commission”) Rules of Practice for Adjudicative Proceedings (the “Rules”), Respondent Novant Health, Inc. (“Novant”) hereby answers the Administrative Complaint (the “Complaint”) against Novant and Community Health Systems, Inc. (“CHS”) that the FTC filed in relation to Novant’s proposed acquisition from CHS of two hospitals: Lake Norman Regional Medical Center (“Lake Norman Regional”) and Davis Regional Medical Center (“Davis”) and related assets (the “Proposed Transaction”) as set forth below.

Novant Health, a not-for-profit health system based in North Carolina, proposed to acquire two struggling in-state hospital facilities from Community Health Systems in order to revitalize them and bring the highest standards for patient safety and quality of care to the facilities and the patients they serve. Contrary to the FTC’s allegations, the proposed transaction will not harm competition. Instead, it will result in greater access for patients to high-quality healthcare in the Charlotte region, new investments in the acquired facilities, and other significant benefits. The FTC’s request for an injunction ignores the reality that absent Novant’s investment in Lake Norman and Davis, these facilities will continue to decline and patients are likely to lose even more access to healthcare services (as evidenced by the fact that CHS has already converted Davis

to a behavioral health facility). The core purpose of our antitrust laws is the protection of consumers, and those laws should not be construed in a manner that would actually reduce access for consumers to quality healthcare in the Charlotte region. Novant accordingly denies the FTC's allegations, except as specified below.

I. NATURE OF THE CASE

1. The allegations set forth in Paragraph 1 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 1, except Novant admits that it seeks to acquire CHS's Lake Norman Regional and Davis hospitals in North Carolina.

2. Novant admits that it operates Novant's Huntersville Medical Center ("Novant Huntersville"). Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the relative number of patients Novant Huntersville serves within the "Eastern Lake Norman Area" and therefore denies them. Novant denies that the Proposed Transaction would permit Novant to acquire a significant competitor. Novant denies that the "Eastern Lake Norman Area" is the relevant geographic market. Novant admits that Lake Norman Regional is located roughly 11 miles north of Novant Huntersville. Novant denies the remaining allegations of Paragraph 2.

3. The allegations set forth in Paragraph 3 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 3.

4. The allegations set forth in Paragraph 4 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 4, except Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations reflected in the final two sentences of Paragraph 4, and therefore denies them.

5. The allegations set forth in Paragraph 5 state legal conclusions to which no response is required. To the extent the allegations set forth in Paragraph 5 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 5.

6. The allegations set forth in Paragraph 6 state legal conclusions to which no response is required. To the extent the allegations set forth in Paragraph 6 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 6.

II. JURISDICTION

7. The allegations set forth in Paragraph 7 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 7.

8. The allegations set forth in Paragraph 8 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 8.

III. RESPONDENTS

9. Novant admits that it is a multi-state non-profit healthcare provider. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning its size relative to other hospital systems in North Carolina and therefore denies them. Novant admits that it is headquartered in Winston-Salem. Novant admits that its annual revenue in 2022 was approximately \$7.6 billion. Novant denies the remaining allegations of Paragraph 9.

10. Novant admits that it operates 16 general acute care (“GAC”) hospital facilities in North Carolina and approximately 800 outpatient facilities and physician offices in North Carolina

and South Carolina. Novant admits that six of its GAC hospitals are located within the Greater Charlotte area. Novant admits that Novant Huntersville is a 151-bed GAC hospital located in Mecklenburg County approximately 14 miles north of center-city Charlotte. Novant denies that the “Eastern Lake Norman Area” is the relevant geographic market. Novant denies that Novant Huntersville is a “community hospital.” Novant denies the remaining allegations of Paragraph 10.

11. Novant admits that it acquired a hospital in North Carolina in 2021. To the extent the allegations of Paragraph 11 imply any connection between any Novant acquisition and the allegations of the final sentence in Paragraph 11, Novant denies any such suggestion. Novant denies the remaining allegations of Paragraph 11.

12. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 12 and therefore denies them.

13. Novant admits that CHS currently operates Lake Norman Regional and Davis. Novant admits that Lake Norman Regional is a 123-bed hospital located in Mooresville, North Carolina but denies that the “Eastern Lake Norman Area” is the relevant geographic market. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning Lake Norman Regional operations and therefore denies them. Novant admits that Lake Norman Regional is located in Mooresville and is approximately 25 miles north of center-city Charlotte. Novant admits that Davis is located in Statesville, North Carolina and roughly equal distances between Charlotte, North Carolina and Winston-Salem, North Carolina. Novant admits that Davis now operates as a behavioral health hospital. Novant denies the remaining allegations of Paragraph 13.

IV. THE PROPOSED TRANSACTION

14. Novant admits that Novant and CHS entered into an Asset Purchase Agreement dated February 28, 2023 that concerns the acquisition of Lake Norman Regional, Davis, and related assets (the “APA”). To the extent the allegations set forth in Paragraph 14 seek to quote from or characterize the contents of the APA, Novant answers that the APA speaks for itself and refers to the APA for its complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 14.

V. THE PROPOSED TRANSACTION WOULD SIGNIFICANTLY INCREASE CONCENTRATION IN A HIGHLY CONCENTRATED MARKET¹

15. The allegations set forth in Paragraph 15 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 15.

16. The allegations set forth in Paragraph 16 state legal conclusions to which no response is required. To the extent a response is required, Novant denies them.

17. The allegations set forth in Paragraph 17 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 17, except Novant admits that inpatient GAC services may include medical, surgical, and diagnostic services requiring an overnight hospital stay.

18. Novant denies the allegations of Paragraph 18, except Novant admits that: (i) inpatient GAC services may include childbirth, some cardiac surgery, treatment of some serious illnesses and infections, and some emergency care; (ii) individuals who need medical, surgical, and diagnostic services that necessitate an overnight hospital stay may need services included

¹ Novant has included headings from the Complaint solely for the convenience of the reviewer. For the avoidance of any doubt, Novant denies any substance contained in these headings.

among those described as inpatient GAC services; and (iii) services included among those described as inpatient GAC services are provided by certain providers which may include but are not necessarily limited to GAC hospitals.

19. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 and therefore denies them, except Novant admits that, at times, it recognizes inpatient GAC services as a category of hospital services.

20. The allegations set forth in Paragraph 20 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 20.

21. Novant admits that outpatient services typically do not require an overnight hospital stay and may include minor surgeries, MRI scans, and mammograms. Novant admits that whether a patient requires inpatient or outpatient services is a medical determination based on that patient's specific clinical need. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 concerning the abilities of commercial insurers and therefore denies them. Novant denies that the "Eastern Lake Norman Area" is the relevant geographic market. Novant admits that outpatient services are offered in locations such as ambulatory surgery centers and physician offices. Novant denies the remaining allegations of Paragraph 21.

22. The allegations set forth in Paragraph 22 state legal conclusions to which no response is required. To the extent a response is required, Novant denies them.

23. The allegations set forth in Paragraph 23 state legal conclusions to which no response is required. To the extent a response is required, Novant denies them.

24. The allegations set forth in Paragraph 24 state legal conclusions to which no response is required. To the extent a response is required, Novant denies them.

25. Novant denies that the “Eastern Lake Norman Area” is the relevant geographic market. The allegations set forth in Paragraph 25 otherwise state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 25.

26. Novant denies that the “Eastern Lake Norman Area” is the relevant geographic market. Novant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 26, and therefore denies them, except Novant admits that the Greater Charlotte area has experienced population growth and that Mooresville, Davidson, Cornelius, Huntersville, and Statesville are in close proximity to Interstate 77 (“I-77”).

27. Novant denies that the “Eastern Lake Norman Area” is the relevant geographic market or a distinct community within the Greater Charlotte area. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 27 concerning the views and preferences of residents in the “Eastern Lake Norman Area” and therefore denies the same. Novant denies the remaining allegations of Paragraph 27.

28. Novant denies that the “Eastern Lake Norman Area” is the relevant geographic market or a distinct community within the Greater Charlotte area. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 28 concerning the preferences and views of third-party patients, employers, and insurers, and therefore denies the same. The allegations set forth in Paragraph 28 concerning federal time-and-distance requirements state legal conclusions to which no response is required. To the extent a response is required, Novant denies them. Novant denies the remaining allegations of Paragraph 28.

29. Novant denies the allegations of Paragraph 29.

30. Novant denies that the “Eastern Lake Norman Area” is the relevant geographic market. Novant lacks knowledge or information sufficient to form a belief as to the allegations set forth in Paragraph 30 and therefore denies them.

31. Novant denies that the “Eastern Lake Norman Area” is the relevant geographic market. To the extent the allegations set forth in Paragraph 31 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required concerning those allegations, Novant denies them. Novant denies the remaining allegations of Paragraph 31.

32. Novant denies that the “Eastern Lake Norman Area” is the relevant geographic market. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 32 concerning CHS and therefore denies them. Novant denies the remaining allegations of Paragraph 32.

33. The allegations set forth in Paragraph 33 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 33 except Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 33 concerning Lake Norman Regional’s practices and therefore denies them.

34. The allegations set forth in Paragraph 34 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 34.

35. Novant denies that the “Center City/Northern Charlotte Region” is the relevant geographic market. The allegations set forth in Paragraph 35 otherwise state legal conclusions to which no response is required. To the extent a response is required, Novant denies them.

36. The allegations set forth in Paragraph 36 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 36.

37. The allegations set forth in Paragraph 37 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 37.

38. The allegations set forth in Paragraph 38 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 38.

39. The allegations set forth in Paragraph 39 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 39.

40. The allegations set forth in Paragraph 40 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 40.

41. The allegations set forth in Paragraph 41 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 41.

42. The allegations set forth in Paragraph 42 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 42.

**VI. THE PROPOSED TRANSACTION WOULD ELIMINATE HEAD-TO-HEAD
COMPETITION BETWEEN LAKE NORMAN REGIONAL AND NOVANT
HUNTERSVILLE**

43. Novant denies that Lake Norman Regional and Novant Huntersville “compete closely” and that Lake Norman Regional “driv[es]” Novant “to offer more competitive reimbursement rates and to invest in improving the quality of [its] healthcare services.” Novant further denies that the “Eastern Lake Norman Area” is the relevant geographic market. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43 concerning CHS’s or Lake Norman Regional’s actions or practices and therefore denies the same. Novant denies the remaining allegations of Paragraph 43.

44. Novant denies that Lake Norman Regional and Novant Huntersville engage in “substantial competition.” The remaining allegations set forth in Paragraph 44 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the remaining allegations of Paragraph 44.

45. Novant admits that it seeks to be included in some healthcare plans and seeks to attract patients by providing remarkable care. Novant denies the remaining allegations of Paragraph 45.

46. Novant admits that hospitals can negotiate contracts with insurers and that those contracts can include reimbursement rates for services rendered to enrollees of insurers’ health plans. Novant denies the remaining allegations of Paragraph 46.

47. Novant lacks knowledge or information sufficient to form a belief as to the behavior and preferences of consumers and employers generally and therefore denies the allegations set forth in Paragraph 47.

48. Novant admits that it seeks to offer competitive terms and reimbursement rates. Novant lacks knowledge or information sufficient to form a belief as to the general incentives of hospitals or how they are likely to behave and therefore denies the remaining allegations set forth in Paragraph 48.

49. Novant lacks knowledge or information sufficient to form a belief as to the behavior of hospitals generally and therefore denies the allegations set forth in Paragraph 49.

50. Novant lacks knowledge or information sufficient to form a belief as to the behavior of hospitals and insurers generally and therefore denies the allegations set forth in Paragraph 50.

51. Novant lacks knowledge or information sufficient to form a belief as to the behavior and preferences of consumers and employers generally and therefore denies the allegations set forth in Paragraph 51.

52. Novant admits that hospitals may compete on non-price features. Novant lacks knowledge or information sufficient to form a belief as to the general incentives of hospitals or how they are likely to behave and therefore denies the remaining allegations set forth in Paragraph 52.

53. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53 and therefore denies them.

54. The allegations set forth in Paragraph 54 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 54.

55. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 55 and therefore denies them. To the extent the allegations set forth in Paragraph 55 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies these allegations. Novant denies the remaining allegations of Paragraph 55.

56. To the extent the allegations set forth in Paragraph 56 seek to quote from or characterize the contents of internal Novant documents, Novant answers that such documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies these allegations. Novant denies the remaining allegations of Paragraph 56.

57. Novant denies that Lake Norman Regional and Novant Huntersville are “significant competitors.” Novant admits Lake Norman Regional is currently the closest geographic hospital to Novant Huntersville, but that will not be true once Atrium Lake Norman opens. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the overlap in service areas of Lake Norman Regional and Novant Huntersville, and therefore denies the same. To the extent the allegations set forth in Paragraph 57 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies these allegations. Novant denies the remaining allegations of Paragraph 57.

58. Novant admits that the Greater Charlotte area has experienced population growth. Novant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 58 and therefore denies them.

59. Novant admits that Lake Norman Regional and Novant Huntersville are the currently operating GAC hospitals along I-77 between Statesville and center-city Charlotte. Novant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 59 and therefore denies them.

60. To the extent the allegations set forth in Paragraph 60 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies these allegations. Novant denies the remaining allegations of Paragraph 60.

61. Novant lacks knowledge or information sufficient to form a belief as to the behavior and beliefs of patients and insurers generally and therefore denies these allegations. Novant denies the remaining allegations set forth in Paragraph 61.

62. To the extent the allegations set forth in Paragraph 62 seek to quote from or characterize the contents of a Novant document, Novant answers that such document speaks for itself and refers to that document for its complete and accurate content. The remaining allegations set forth in Paragraph 62 state legal conclusions to which no response is required. To the extent any further response is required, Novant denies the allegations of Paragraph 62.

63. Novant admits that Atrium Lake Norman is reported to open in 2025. To the extent the allegations set forth in Paragraph 63 seek to quote from or characterize the contents of a CHS document, Novant answers that the document speaks for itself and refers to that document for its

complete and accurate content. To the extent any further response is required, Novant denies these allegations. Novant denies the remaining allegations of Paragraph 63.

64. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 64 concerning Lake Norman Regional and therefore denies them. Novant denies the remaining allegations of Paragraph 64.

65. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 65 and therefore denies them. To the extent the allegations set forth in Paragraph 65 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 65.

66. The allegations set forth in Paragraph 66 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 66.

67. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 67 and therefore denies them. To the extent the allegations set forth in Paragraph 67 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 67.

68. Novant denies the allegations of Paragraph 68. To the extent the allegations set forth in Paragraph 68 seek to quote from or characterize the contents of an internal Novant document, Novant answers that such document speaks for itself, and refers to that document for

its complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 68.

69. Novant lacks knowledge or information sufficient to evaluate the allegations of Paragraph 69 as to purportedly modeled economic harm and therefore denies them. Novant denies the remaining allegations of Paragraph 69.

70. Novant denies the allegations of Paragraph 70.

71. The allegations set forth in Paragraph 71 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 71.

72. Novant denies the allegations of Paragraph 72.

73. Novant admits that it has invested in its healthcare systems and facilities, including Novant Huntersville. Novant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 73 and therefore denies them. To the extent the allegations set forth in Paragraph 73 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 73.

74. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 74 and therefore denies them. To the extent the allegations set forth in Paragraph 74 seek to quote from or characterize the contents of a CHS document, Novant answers that the document speaks for itself and refers to that document for its complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 74.

75. To the extent the allegations set forth in Paragraph 75 seek to quote from or characterize the contents of internal Novant documents, Novant answers that such documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies these allegations. Novant denies the remaining allegations of Paragraph 75.

76. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 76 and therefore denies them. To the extent the allegations set forth in Paragraph 76 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 76.

77. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 77 and therefore denies them. To the extent the allegations set forth in Paragraph 77 seek to quote from or characterize the contents of a Novant or CHS document, Novant answers that the document speaks for itself and refers to that document for its complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 77.

78. Paragraph 78 states legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 78.

79. To the extent the allegations set forth in Paragraph 79 seek to quote from or characterize the contents of CHS documents, Novant answers that those documents speak for themselves and refers to those documents for their complete and accurate content. To the extent

any further response is required, Novant denies these allegations. Novant denies the remaining allegations of Paragraph 79.

80. To the extent the allegations set forth in Paragraph 80 seek to quote from or characterize the contents of an internal Novant document, Novant answers that such document speaks for itself and refers to that document for its complete and accurate content. To the extent any further response is required, Novant denies these allegations. Novant denies the remaining allegations of Paragraph 80.

81. Novant denies the allegations of Paragraph 81.

VII. COUNTERVAILING FACTORS DO NOT OFFSET THE PROPOSED TRANSACTION'S THREAT TO COMPETITION

82. The allegations set forth in Paragraph 82 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 82.

83. Novant admits that the construction of a new hospital can require the expenditure of resources. Novant denies the remaining allegations of Paragraph 83.

84. The allegations set forth in Paragraph 84 state legal conclusions to which no response is required. Novant refers to North Carolina's laws and regulations concerning the CON procedure for their complete and accurate content. To the extent a response is required, Novant denies the allegations of Paragraph 84.

85. Novant admits that Atrium Lake Norman is reported to open in 2025. Novant denies that the opening of Atrium Lake Norman illustrates high barriers to building a new hospital in North Carolina. Novant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 85 and therefore denies them.

86. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 86 and therefore denies them.

87. Novant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 87 and therefore denies them. To the extent the allegations set forth in Paragraph 87 seek to quote from or characterize the contents of an internal Novant document, Novant answers that such document speaks for itself and refers to that document for its complete and accurate content. To the extent any further response is required, Novant denies the allegations of Paragraph 87.

88. The allegations set forth in Paragraph 88 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 88.

89. The allegations set forth in Paragraph 89 state legal conclusions to which no response is required. To the extent a response is required, Novant denies that there is a “low likelihood” that Atrium Lake Norman would be able to quickly expand its capacity. Novant denies that the Proposed Transaction would result in anticompetitive effects. Novant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 89 and therefore denies them. To the extent any further response is required, Novant denies the allegations of Paragraph 89.

90. The allegations set forth in Paragraph 90 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 90.

VIII. VIOLATION

Count I – Illegal Agreement

91. Novant incorporates its answers to the allegations of Paragraphs 1 through 90 as though fully set forth herein.

92. The allegations set forth in Paragraph 92 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 92.

Count II – Illegal Acquisition

93. Novant incorporates its answers to the allegations of Paragraphs 1 through 90 as though fully set forth herein.

94. The allegations set forth in Paragraph 94 state legal conclusions to which no response is required. To the extent a response is required, Novant denies the allegations of Paragraph 94.

NOVANT’S AFFIRMATIVE AND OTHER DEFENSES

Novant asserts the following defenses without assuming the burden of proof on such defenses 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 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, North Carolina area, cost-savings, innovation, and other procompetitive efficiencies. These procompetitive benefits outweigh any and all purported anticompetitive effects of the Proposed Transaction.

NINTH 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.

TENTH DEFENSE

Novant 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 Greater Charlotte area.

ELEVENTH 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 United States Constitution and the doctrine of separation of powers.

TWELFTH 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 United States Constitution and the doctrine of separation of powers.

THIRTEENTH DEFENSE

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

FOURTEENTH DEFENSE

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

DEFENSES INCORPORATED BY REFERENCE

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

RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES

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

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, Novant requests that the Commission enter judgment in its favor providing as follows:

- A. That the Complaint be dismissed in its entirety with prejudice;
- B. That the Commission deny the relief contemplated in the Complaint;
- C. That the costs incurred in defending this action be awarded to Novant, including expert’s fees and reasonable attorneys’ fees as may be allowed by law; and
- D. For any and all further relief as the Commission may deem just and proper.

Dated: February 8, 2024

Respectfully Submitted,

/s/ Heidi K. Hubbard

Heidi K. Hubbard

F. Lane Heard III

Jonathan B. Pitt

Beth A. Stewart

Carol J. Pruski

J. Liat Rome

Altumash Mufti

WILLIAMS & CONNOLLY LLP

680 Maine Avenue SW

Washington, DC 20024
Tel: (202) 434-5000
hhubbard@wc.com
lheard@wc.com
jpitt@wc.com
bstewart@wc.com
cpruski@wc.com
lrome@wc.com
amufti@wc.com

Alexis J. Gilman
CROWELL & MORING LLP
1001 Pennsylvania Avenue NW
Washington, DC 20004
Tel: (202) 624-2500
Fax: (202) 628-5116
agilman@crowell.com

Counsel for Respondent Novant Health, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on February 8, 2024, I caused the foregoing document to be filed electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
ElectronicFilings@ftc.gov

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I also certify that I caused the foregoing document to be served via email to:

Nathan Brenner
Nicolas Stebinger
Cory Gordon
Christopher Harris
Karen H. Hunt
Kennan Khatib
Ryan Maddock
Louis Naiman
Goldie V. Walker
Kurt Walters
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
nbrenner@ftc.gov
nstebinger@ftc.gov
cgordon@ftc.gov
charris1@ftc.gov
khunt@ftc.gov
kkhatib@ftc.gov
rmaddock@ftc.gov
lnaiman@ftc.gov
gwalker@ftc.gov
kwalters@ftc.gov

Counsel Supporting the Complaint

Joshua Lipton
Michael J. Perry
Jamie E. France
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue N.W.
Washington, D.C. 20036
JLipton@gibsondunn.com
MJPerry@gibsondunn.com
JFrance@gibsondunn.com
Tel: (202) 955-8500
Facsimile: (202) 467-0539

Thomas Tyson
Gibson, Dunn & Crutcher LLP
One Embarcadero Center Suite 2600
San Francisco, CA 94111
TTyson@gibsondunn.com

Scott K. Hvidt
Gibson, Dunn & Crutcher LLP
2100 Ross Avenue Suite 2100
Dallas, TX 75201
SHvidt@gibsondunn.com

Counsel for Community Health Systems, Inc.

/s/ Heidi K. Hubbard

Heidi K. Hubbard
Williams & Connolly LLP
680 Maine Avenue, SW
Washington, DC 20024
Telephone: (202) 434-5000
Email: hhubbard@wc.com

Counsel for Respondent Novant Health, Inc.