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ATTORNEY GENERAL MASTO ANNOUNCES SETTLEMENT TO RESTORE COMPETITION FOR HEART CARE IN RENO AND SPARKS

Renown Health Cardiologists To Be Released From Non-Compete Terms

Las Vegas, NV – Nevada Attorney General Catherine Cortez Masto announced the filing of a lawsuit and a settlement today against Renown Health, the largest hospital provider in Reno, involving its acquisition of the two largest cardiology practices in Reno, Reno Heart Physicians and Sierra Nevada Cardiology Associates.

“My office worked closely with the Federal Trade Commission,” said Masto. “The settlement with Renown Health restores competition for cardiology services in the Reno Sparks area as quickly as possible. Renown Health will release a certain number of its cardiologists from their employment contracts, freeing them to practice either as employees of other health care entities or as part of independent medical practices in Reno or Sparks.”

The acquisition of two of the largest cardiology practices resulted in Renown Health becoming the employer of 88 percent of the cardiologists that regularly practice in the Reno Sparks area. The settlement directs Renown Health to suspend enforcement of certain non-compete terms in its employment agreements with cardiologists so that competition can be restored in this market.

The lawsuit’s complaint alleges that Renown Health violated state and federal antitrust laws when it acquired Reno Heart Physicians after acquiring Sierra Nevada Cardiology Associates. The complaint alleges that the consolidation of these two practices into one increased the bargaining power of Renown Health and may lead to higher prices for cardiology services in the Reno Sparks area. The complaint further states that the non-compete terms in the employment agreements between Renown Health and its cardiologists are an entry barrier into this market, as the non-compete terms deter cardiologists from joining medical practices in competition with Renown Health should they leave its employment.

The settlement subject to court approval, specifies the process that Renown Health must follow in suspending the non-compete terms in its employment agreements with the acquired cardiologists. For a limited time period, Renown Health’s cardiologists may explore other employment and professional opportunities in the Reno Sparks area.

During this period, Renown Health cannot interfere with those discussions and cannot enforce the non-compete terms prohibiting those discussions.

Cardiologists may terminate their employment with Renown Health without risk of breaching the non-compete terms or other retaliation if the following conditions are met by the cardiologist:

- Submits notice of an intention to terminate employment with Renown Health to a monitor who has been appointed by the Attorney General for the purpose of assuring confidentiality;
- States his or her intention to continue to practice in the Reno Sparks area for at least one year;
- Must be among the first ten cardiologists to submit notice to terminate employment; and
- Leaves employment with Renown Health within 60 days of Renown Health receiving notice from the monitor.

If at the end of this period, less than six cardiologists have notified the monitor of their intent to terminate employment, the period in which cardiologists may continue to explore other opportunities and leave Renown Health's employment without penalty will remain open until six cardiologists have terminated their employment with Renown Health. This ensures at least six cardiologists can leave Renown Health's employment, and in turn remedy the decreased competition alleged in the complaint.

This process involving the non-compete terms is the same process that Renown Health will follow in a parallel action brought by the Federal Trade Commission pursuant to its own administrative process.

The settlement also provides this relief:

- Renown Health shall provide the Attorney General advance notification of future acquisitions affecting cardiology services in the Reno Sparks area;
- Renown Health shall implement an antitrust compliance program for its executive and cardiology staff intended to ensure settlement and antitrust law compliance; and
- Reimbursement of the Attorney General's fees and costs resulting from the investigation (currently, \$550,000).

In the event of non-compliance with the settlement, Renown Health would be subject to monetary penalties, injunctive relief, and other relief the court deems appropriate.

Filed in the United States District Court, District of Nevada, the lawsuit is called The State of Nevada v. Renown Health, No. 3:12-cv-00409.

Click the links for a copy of the [final judgment](#) and [complaint](#) .

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EXHIBIT A

EXHIBIT A

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**THE STATE OF NEVADA by its ATTORNEY
GENERAL CATHERINE CORTEZ MASTO**

Plaintiff,

v.

RENOWN HEALTH

Defendant.

Case No.: 3:12-cv-00409

FINAL JUDGMENT

WHEREAS, Plaintiff State of Nevada, through its Attorney General, after initiating an investigation of the acquisition of Reno Heart Physicians by Defendant Renown Health (“Renown Health”) filed a Complaint alleging violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and the Nevada Unfair Trade Practices Act, NRS 598A *et seq.*;

AND WHEREAS, Renown Health agrees that this Court has jurisdiction over it and the subject matter in this action;

AND WHEREAS, the Parties, through their attorneys, have consented to the entry of this Final Judgment (“Judgment”) without trial or adjudication of any issue of fact or law and without this Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

AND WHEREAS, Renown Health agrees to be bound by the provisions of this Judgment pending its approval by the Court and thereafter;

AND WHEREAS, Renown Health has agreed to similar orders with the Federal Trade Commission in a Related Action (defined herein) to address the allegations set forth by Plaintiff in its Complaint;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, without any admission or finding of wrongdoing or violation of any law, and upon consent of the Parties, it is ORDERED, ADJUDGED, AND DECREED:

JURISDICTION

1. This Court has jurisdiction over the subject matter of, and each of the Parties to, this action. The Complaint states a claim upon which relief may be granted against Renown Health under Section 7 of the Clayton Act, 15 U.S.C. § 18, and under NRS 598A.060(1)(f), alleged in the Complaint as a pendent state claim.
2. Renown Health is a non-profit corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada with its office and principal place of business located at 1155 Mill Street, Reno, Nevada 89502.

DEFINITIONS

As used in this Judgment, the following definitions apply:

3. "Acceptable Termination" means any termination of employment with Renown Health resulting from (1) a Termination Notification which, upon consultation between the Monitor and Plaintiff, is submitted, after the Federal Trade Commission's Decision and Order in the Related Action becomes final, to Renown Health by the Monitor, or (2) Renown Health notifying the Monitor that a Cardiologist

Employee is otherwise leaving employment with Renown Health with the intention of Participating in a Reno Cardiology Practice for a period of at least one year and the Monitor consulting with Plaintiff regarding such notice.

4. "Antitrust Compliance Program" means the program to ensure compliance with this Judgment and the Antitrust Laws, pursuant to Paragraph 53.
5. "Antitrust Laws" means the Nevada Unfair Trade Practice Act, NRS 598A *et. seq.*, the Sherman Act, 15 U.S.C. § 1 *et. seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*
6. "Cardiologist Employee" means a Physician who provides Cardiology Services in the Reno/Sparks Geographic Area as an employee of Renown Health and who, prior to providing Contract Services for Renown Health, offered Cardiology Services as a Participant in SNCA or as a Participant in Reno Heart.
7. "Cardiology Services" means medical professional services in general cardiology (*e.g.*, medical management of heart and vascular conditions), invasive cardiology (*e.g.*, cardiac catheterizations), interventional cardiology (*e.g.*, angioplasty, placement of stents), and electrophysiology (*e.g.*, placement of pacemakers and defibrillators); *provided, however*, Cardiology Services does not include services provided to pediatric patients or services provided by cardiac surgeons.
8. "Contract Services" means any service performed pursuant to any Employment Agreement between Renown Health and a Cardiologist Employee.
9. "Employment Agreement" means, as applicable to the Cardiologist Employee, either an employment agreement between Renown Health and a Participant in SNCA

entered into on or around November 24, 2010, or an employment agreement between Renown Health and a Participant in Reno Heart Physicians entered into on or around March 17, 2011.

10. "Executive and Cardiology Staff" means at least the Directors on the Board of Directors for Renown Health; the Directors on the Board of Directors for the Nevada Heart Institute; the President and/or Chief Executive Officer for Renown Health and any employees that directly report to him or her or who are members of the President's Council; the Chief Financial Officer for Renown Health; the CFO Affiliates for Renown Health (or similar Person who supervises the Nevada Heart Institute and NHI-1, Inc.) and any employees that directly report to him or her or who set the policy, scope, and manner in which the Nevada Heart Institute offers Cardiology Services; the General Counsel for Renown Health; and Cardiologist Employees or other employed cardiologists for Renown Health.
11. "In-Person Training" means any educational session, seminar, or other meeting whereby individuals participate on a face-to-face basis, through a live video-conference feed, or an online interactive program as part of the Antitrust Compliance Program.
12. "Monitor" means the Person appointed to act as monitor by Plaintiff (in consultation with the Federal Trade Commission) pursuant to Paragraphs 38 to 44.
13. "Nevada Heart Institute" means Nevada Heart Institute, Inc., a non-profit corporation and an affiliate of Renown Health that uses or used any of the following trade or doing business as names: Nevada Heart Institute, Renown Institute for Heart and

Vascular Health, Reno Heart Physicians, Sierra Nevada Cardiology Associates; its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by it.

14. "NHI-1, Inc." means NHI-1, Inc., a non-profit corporation and an affiliate of Renown Health that uses or used any of the following trade or doing business as names: Nevada Heart Institute, Reno Heart Physicians, Renown Institute for Heart and Vascular Health; its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by it.

15. "Participate" in an entity or an arrangement means (1) to be a partner, joint venturer, shareholder, owner, member, or employee of such entity or arrangement, or (2) to provide services, agree to provide services, or offer to provide services through such entity or arrangement. This definition applies to all tenses and forms of the word "participate," including but not limited to, "participating," "participated," "participation," and "participant."

16. "Payer" means any Person that pays, or arranges for the payment, for all or any part of any physician services for itself or for any other Person, as well as any Person that develops, leases, or sells access to networks of physicians.

17. "Person" means any natural person or artificial person, including, but not limited to, any corporation, unincorporated entity, or government entity. For the purpose of this Judgment, any corporation includes the subsidiaries, divisions, groups, and affiliates controlled by it.

18. "Physician" means a doctor of allopathic medicine ("M.D.") or a doctor of osteopathic medicine ("D.O.").
19. "Related Action" means the Federal Trade Commission's investigation of the acquisition by Renown Health of Reno Heart Physicians and its employment of most Reno Heart cardiologists, and subsequent action, *In the Matter of Renown Health*, pursuant to its administrative process against Renown Health resulting in an Order to Suspend Enforcement of Renown Non-Compete and a Decision and Order.
20. "Relating To" means pertaining in any way to, and is not limited to that which pertains exclusively to or primarily to. This definition applies to all tenses and forms of the word "relate to," including but not limited to, "relates to," and "related to."
21. "Release Period" means the period of time beginning on the date the Federal Trade Commission's Decision and Order in the Related Action becomes final and ending thirty (30) days from the date the Federal Trade Commission's Decision and Order in the Related Action becomes final.
22. "Reno Cardiology Practice" means Cardiology Services offered in the Reno/Sparks Geographic Area by a cardiologist Participating in a medical practice or in an employment arrangement, excluding that of a Cardiologist Employee.
23. "Reno Heart Physicians" or "Reno Heart" means the professional corporation formerly known as Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson and Zebrack, Ltd. doing business as Reno Heart Physicians.

24. "Reno/Sparks Geographic Area" means the Reno/Sparks Metropolitan Statistical Area, as defined by the United States Office of Management and Budget, consisting of Washoe and Storey Counties.
25. "Renown Health" means Defendant Renown Health, its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups and affiliates controlled by it, including but not limited to the Nevada Heart Institute and NHI-1, Inc., and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.
26. "Renown Non-Compete Provisions" means, (1) with respect to the Share Purchase Agreement (i) Sections 10.5 as it relates to disclosing the identities of and communicating with patients treated by a Cardiologist Employee; and (ii) Section 10.7(a) as it relates to interfering with relationships between Renown Health and patients treated by a Cardiologist Employee; (iii) Sections 10.6, 10.7(b)-(d), 10.8, 10.9, 10.12, 10.15, and Exhibit A (Additional Breach Damages - Article 10) as such action under (i), (ii) or (iii) relates to a Cardiologist Employee Participating in a Reno Cardiology Practice pursuant to an Acceptable Termination; and (2) with respect to any Employment Agreement between Renown Health and any Cardiologist Employee, (i) Sections 7.5 and 11 as they relate to disclosing the identities of and communicating with patients treated by a Cardiologist Employee; (ii) Section 7.7(a) as it relates to interfering with relationships between Renown Health and patients treated by a Cardiologist Employee; (iii) Sections 7.6, 7.7(b)-(d), 7.8, 7.9, 7.12, 7.15, 10.4, and Exhibit C as such action under (i), (ii), or (iii) relates to a Cardiologist

Employee Participating in a Reno Cardiology Practice pursuant to an Acceptable Termination.

27. "Separation Agreement" and "Separation Agreements" mean any agreement Related To terms by which a Cardiologist Employee terminates his or her Contract Services. *Provided, however,* a Separation Agreement shall not include (1) any agreement between Renown Health and such Cardiologist Employee to Participate in a Reno Cardiology Practice for a period of at least a year; or (2) any agreement by Renown Health to provide support to such Cardiologist Employee to Participate in a Reno Cardiology Practice.
28. "Share Purchase Agreements" means any share purchase agreements entered into between Renown Health and SNCA, or any of SNCA's members, in or around December 2010, and any share purchase agreement entered into between Renown Health and Reno Heart Physicians, or any of its members, in or around March 2011.
29. "Suspension Period" means the period from the date the Federal Trade Commission's Order to Suspend Enforcement in the Related Action becomes final until the Termination Date.
30. "SNCA" means Sierra Nevada Cardiology Associates, the professional corporation formerly known as Arger, DiPaolo, Drummer, Fuller, Newmark & Spring doing business as Sierra Nevada Cardiology Associates.
31. "Termination Date" means the date on which the Federal Trade Commission's Decision and Order in the Related Action becomes final, or on the date Renown

Health receives notice from the Federal Trade Commission that a Decision and Order will not be issued in the Related Action.

32. "Termination Notification" means (1) written notification submitted to the Monitor by a Cardiologist Employee of that employee's intention to terminate his or her Employee Agreement and intention to Participate in a Reno Cardiology Practice for a period of at least one year after such termination, or (2) independent determination by the Monitor that a Cardiologist Employee intends to Participate in a Reno Cardiology Practice for a least one year after such termination.

CARDIOLOGY SERVICES CONDUCT TERMS

33. Renown Health shall:

- a. Not enforce any of the Renown Non-Compete Provisions against any Cardiologist Employee for any activity that Cardiologist Employee engaged in during the Suspension Period through the Release Period that Relates To providing Termination Notification; *provided, however*, that this Paragraph 33(a) does not prohibit Renown Health from enforcing any of the Renown Non-Compete Provisions against any Cardiologist Employee who terminates Contract Services prior to the Release Period;
- b. For each Termination Notification that is (1) submitted during the Release Period and (2) received by Renown Health as an Acceptable Termination, terminate Contract Services of the Cardiologist Employee who submitted that Termination Notification, and allow that Cardiologist Employee to leave Renown Health's

employment on or before sixty (60) days of Renown Health's receipt of such notification from the Monitor;

- c. For any activity Related To this Paragraph 33, waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any Cardiologist Employee of any of the Renown Non-Compete Provisions; and
- d. Not take any other action to discourage, impede, or otherwise prevent any Cardiologist Employee from terminating Contract Services pursuant to this Paragraph 33.

PROVIDED, HOWEVER, upon receipt by Plaintiff of Renown Health's Paragraph 52 verified report of Acceptable Termination by ten (10) Cardiologist Employees, the Release Period shall end. *Provided further* that, if during the Release Period there are more than ten (10) Acceptable Terminations, the Monitor, after consultation with Plaintiff, shall forward to Renown Health the first ten (10) such notifications received by the Monitor and shall not reveal the identity of any of the additional Cardiologist Employees who submitted Termination Notifications.

34. If after the expiration of the Release Period, Renown Health has not received

Acceptable Termination for at least six (6) Cardiologist Employees, then until receipt by Plaintiff of Renown Health's Paragraph 52 verified report of Acceptable Termination by six (6) Cardiologist Employees, Renown Health shall:

- a. Not enforce, directly or indirectly, the Renown Non-Compete Provisions against any Cardiologist Employee seeking to provide Termination Notification;

- b. Upon Acceptable Termination of any Cardiologist Employee, terminate Contract Services of each such Cardiologist Employee and allow that cardiologist to leave Renown Health's employment on or before ninety (90) days from the date such notification was received;
- c. For any activity Related To this Paragraph 34, waive all rights to seek or obtain legal or equitable relief for breach of contract for violation by any Cardiologist Employee of any of the Renown Non-Compete Provisions; and
- d. Not take any other action to discourage, impede, or otherwise prevent any Cardiologist Employee from terminating Contract Services pursuant to this Paragraph 34.

35. With respect to each Cardiologist Employee who terminates his or her Contract Services pursuant to Paragraphs 33 or 34 of this Judgment, Renown Health shall not:

- a. Offer any incentive to such Cardiologist Employee to decline to provide Cardiology Services in a Reno Cardiology Practice;
- b. Enforce any provision of such Cardiologist Employee's Employment Agreement that would prevent that cardiologist from informing patients treated by that cardiologist of his or her new Reno Cardiology Practice and providing Cardiology Services to those patients;
- c. Enforce any of the Renown Non-Compete Provisions for any activity Relating To terminating Contract Services;

- d. Require any Cardiologist Employee, prior to terminating his or her Contract Services to enter into a Separation Agreement, including but not limited to any agreement to provide any payment to Renown Health;
- e. Prevent, impede, or otherwise interfere with the provision of Cardiology Services by such Cardiologist Employee; *provided however*, that nothing in this Paragraph 35(e) shall require Renown Health to include any cardiologist in Renown Health's emergency room call panel, in the provider network of any health plan, network, or provider organization or to compensate any cardiologist for providing professional services to Renown Health or to its patients or its contractors beyond any requirement contained in Paragraph 36;
- f. For a period of three (3) years from the date the Federal Trade Commission's Decision and Order in the Related Action becomes final deny, terminate or suspend medical staff privileges, or reduce or change medical staff membership status, of such Cardiologist Employee based solely on the status of that cardiologist's employment or lack of employment by Renown Health. *Provided, however*, that Renown Health may deny, terminate or suspend a cardiologist's medical staff privileges, or reduce or change medical staff membership status, due to (a) quality or patient safety determinations; or (b) violations by the cardiologist of facility rules and regulations or standards of conduct that apply to all medical staff members; and
- g. For a period of two (2) years from the date such Cardiologist Employee terminates his or her Contract Services, directly or indirectly, solicit, induce, or

attempt to solicit or induce the employment of such Cardiologist Employee.

Provided, however, that Renown Health may make general advertisements for cardiologists including, but not limited to, in newspapers, trade publications, websites, or other media not targeted specifically at the cardiologist who so terminated his or her employment or who was released from the Renown Non-Compete Provisions. *Provided further* that Renown Health may employ any cardiologist who applies to Participate with Renown Health, as long as such cardiologist was not solicited by Renown Health in violation of this Paragraph.

36. For a period of one (1) year from the date any Cardiologist Employee terminates Contract Services pursuant to Paragraphs 33 or 34, if that cardiologist's Employment Agreement with Renown Health contained any provisions for support in the event that termination of employment was required by a determination, order, or agreement with a governmental agency, Renown Health shall provide such support in accordance with the terms of the cardiologist's Employment Agreement if requested by the Cardiologist Employee; *provided, however,* that Renown Health shall not, whether or not it is so provided in the Employment Agreement, negotiate with any Payer on behalf of that cardiologist.

37. The purpose of Paragraphs 33 to 36 is to ensure that those Cardiologist Employees who terminate their Contract Services can offer Cardiology Services in a Reno Cardiology Practice in competition with Renown Health and to remedy the lessening of competition alleged in Plaintiff's Complaint. To maximize efficiencies and ensure uniform standards and timelines, such Paragraphs are also intended to procedurally

and substantively conform with Paragraphs II to IV of the Federal Trade Commission's Decision and Order in the Related Action. Accordingly, to the extent such Decision and Order does not become final, Paragraphs 33 to 36 (and related Paragraphs 38 to 44) will automatically be deemed to no longer have an effect; however, all other portions of this Judgment shall remain in effect.

MONITOR TERMS

38. Judge Charles McGee shall be appointed Monitor to assure that Renown Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by Paragraphs 33 to 36.
39. No later than one (1) day after issuance of a Decision and Order by the Federal Trade Commission in the Related Action, Renown Health shall, pursuant to a Monitor Agreement subject to Plaintiff's approval, transfer to the Monitor all the rights, powers, and authorities necessary to permit the Monitor to perform its duties and responsibilities in a manner consistent with the purposes of Paragraphs 33 to 36.
40. In the event a substitute Monitor is required, Plaintiff (in consultation with the Federal Trade Commission) shall select the Monitor, subject to the consent of Renown Health, which consent shall not be unreasonably withheld. If Renown Health has not opposed, in writing, including the reasons for opposing, the selection of a proposed Monitor within ten (10) days after notice by Plaintiff to Renown Health of the identity of any proposed Monitor, Renown Health shall be deemed to have consented to the selection of the proposed Monitor. Not later than ten (10) days after appointment of

a substitute Monitor, Renown Health shall execute an agreement that, subject to the prior approval of Plaintiff, confers on the Monitor all the rights and powers necessary to permit the Monitor to monitor Renown Health's compliance with the Paragraphs 33 to 36 in a manner consistent with the purposes of Paragraphs 33 to 36.

41. Renown Health shall consent to the following terms and conditions regarding the powers, duties, authorities, and responsibilities of the Monitor:

- a. The Monitor shall have the power and authority to monitor Renown Health's compliance with the terms of Paragraphs 33 to 36, and shall exercise such power and authority and carry out the duties and responsibilities of the Monitor in a manner consistent with the purposes of Paragraphs 33 to 36 and in consultation with Plaintiff, including, but not limited to:
 - i. Receiving Termination Notifications from Cardiologist Employees;
 - ii. Notifying each Cardiologist Employee that submitted a Termination Notification whether or not such notification will be an Acceptable Termination;
 - iii. Forwarding such Acceptable Terminations to Renown Health pursuant to this Judgment; and
 - iv. Assuring that Renown Health expeditiously complies with all of its obligations and performs all of its responsibilities as required by Paragraphs 33 to 36.
- b. The Monitor shall act in a fiduciary capacity for the benefit of Plaintiff.
- c. The Monitor shall serve for such time as is necessary to monitor Renown Health's compliance with the Paragraphs 33, 34, 35(a) to (d), and 36.

- d. Subject to any demonstrated legally recognized privilege, the Monitor shall have full and complete access to Renown Health's personnel, books, documents, records kept in the ordinary course of business, facilities and technical information, and such other relevant information as the Monitor may reasonably request, Related To Renown Health's compliance with its obligations under Paragraphs 33 to 36. Renown Health shall cooperate with any reasonable request of the Monitor and shall take no action to interfere with or impede the Monitor's ability to monitor Renown Health's compliance with Paragraphs 33 to 36.
- e. The Monitor shall serve, without bond or other security, at the expense of Renown Health on such reasonable and customary terms and conditions as Plaintiff may set. The Monitor shall have authority to employ, at the expense of Renown Health, consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities. The Monitor shall account for all expenses incurred, including fees for services rendered, subject to the approval of Plaintiff.
- f. Renown Health shall indemnify the Monitor and hold the Monitor harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Monitor's duties, including all reasonable fees of counsel and other reasonable expenses incurred in connection with the preparations for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses

result from malfeasance, gross negligence, willful or wanton acts, or bad faith by the Monitor.

- g. Renown Health shall report to the Monitor in accordance with the requirements of this Judgment and/or as otherwise provided in any agreement approved by Plaintiff. The Monitor shall evaluate the reports submitted to the Monitor by Renown Health, and any reports submitted by a current or former Cardiologist Employee with respect to the performance of Renown Health's obligations under Paragraphs 33 to 36.
- h. Within one (1) month from the date the Monitor is appointed pursuant to Paragraphs 38 to 44, and every sixty (60) days thereafter, until the later of: (i) one (1) year; or (ii) no fewer than six (6) Cardiologist Employees have terminated their Employment Agreements to provide Cardiology Services in the Reno/Sparks Geographic Area, and otherwise as requested by Plaintiff, the Monitor shall report in writing to Plaintiff concerning performance by Renown Health of its obligations under Paragraphs 33 to 36.
- i. Renown Health may require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, that such agreement shall not restrict the Monitor from providing any information to Plaintiff.

42. Plaintiff may, among other things, require the Monitor and each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign

an appropriate confidentiality agreement Relating To Plaintiff materials and information received in connection with the performance of the Monitor's duties.

43. If Plaintiff determines that the Monitor has ceased to act or failed to act diligently, Plaintiff may appoint a substitute Monitor in the same manner as provided in Paragraphs 38 to 44.

44. Plaintiff may on its own initiative, or at the request of the Monitor, seek additional orders or directions from the Court as may be necessary or appropriate to assure compliance with the requirements of this Judgment.

FUTURE TRANSACTIONS TERMS

45. Renown Health shall not, without prior notification to Plaintiff in the manner described in Paragraphs 46 to 48, directly or indirectly:

- a. Acquire any assets of or financial interest in any group that provides Cardiology Services in the Reno/Sparks Geographic Area; or
- b. Enter into any Contract Services with any group that provides Cardiology Services in the Reno/Sparks Geographic Area.

46. If a transaction subject to Paragraph 45 is subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Acts of 1975, as amended, 15 U.S.C. § 18a (the "HSR Act"), the notification shall be in the form required by the HSR Act; furthermore, Renown Health agrees to waive the confidentiality protections under the HSR Act, 15 U.S.C. § 18a(h), the Antitrust Civil Process Act, 15 U.S.C. §§ 1311 *et. seq.* and any other applicable confidentiality provisions, for the purpose of permitting Plaintiff to share documents, information,

and analysis with the United States Department of Justice Antitrust Division or Federal Trade Commission.

47. If a transaction subject to Paragraph 45 is not subject to the reporting and waiting period requirements of the HSR Act, notice shall contain (i) either a detailed term sheet for the proposed acquisition or the proposed agreement with all attachments, and (ii) documents that would be responsive to Item 4(c) and Item 4(d) of the Premerger Notification and Report Form under the HSR Act, and Rules, 16 C.F.R. § 801-803, Relating To the proposed transaction.
48. Notification pursuant to Paragraphs 45 to 47 shall be provided at least thirty (30) days prior to consummating the proposed transaction via overnight express delivery to the following address: State of Nevada, Office of the Attorney General; Bureau of Consumer Protection; Attention: Antitrust Unit; 100 North Carson Street; Carson City, Nevada 89701. If within the thirty (30) day period after notification, Plaintiff makes a written request for additional information, Renown Health shall not consummate the proposed transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested, and where appropriate, granted by letter from Plaintiff.
49. Renown Health shall notify Plaintiff at least thirty (30) days prior to:
- a. Any proposed dissolution of Renown Health;
 - b. Any proposed acquisition, merger or consolidation of Renown Health; or

- c. Any other change in Renown Health, including but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Judgment.

ATTORNEYS FEES AND COSTS TERMS

50. Renown Health shall reimburse to Plaintiff all reasonable attorney fees and costs incurred by Plaintiff Relating To its investigation of Renown Health resulting in this Judgment. The total reimbursement to Plaintiff for attorney fees and costs incurred up to and including entry of this Judgment shall be \$550,000.00, with reimbursement occurring within forty (40) days of entry of this Judgment.
51. Renown Health shall reimburse to Plaintiff all reasonable attorney fees and costs incurred by Plaintiff after entry of this Judgment Relating To monitoring and ensuring compliance with Paragraphs 33 to 36. The rate for such attorney fees shall be \$400 per hour and the rate for paralegals shall be \$100 per hour, but shall not exceed in total \$50,000. Reimbursements shall be made within forty (40) days of a request for reimbursement in writing, which shall include the following information: (a) identification of all Persons employed by, or contracting with, Plaintiff by name and job title; (b) total number of hours worked per Person for which Plaintiff seeks reimbursement for work in whole or in part; (c) a summary description of each Person's work, and (d) the hourly rate applied to each Person's work.

COMPLIANCE AND ENFORCEMENT TERMS

52. No later than thirty (30) days after the date the Federal Trade Commission's

Decision and Order in the Related Action becomes final, and every thirty (30) days

thereafter until Renown Health has fully complied, as relevant, with Paragraphs 33 and 34, Renown Health shall submit to Plaintiff a verified confidential written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs 33 to 36. Renown Health shall submit at the same time a copy of these reports to the Monitor. For the period covered by these reports, the reports shall:

- a. Provide sufficient information and documentation to enable Plaintiff to determine independently whether Renown Health is in compliance with Paragraphs 33 to 36; and
- b. Be verified by a notarized signature or sworn statement, or be self-verified in the manner set form in 28 U.S.C. § 1746.

53. Renown Health shall design, maintain, and operate an Antitrust Compliance

Program to comply with this Judgment and the Antitrust Laws. This program, which does not create a safe harbor or mitigation defense for any possible Judgment non-compliance, shall include, but not be limited to:

- a. Within ten (10) days of entry of this Judgment, Renown Health's appointment of a compliance officer (and a successor within thirty (30) days of a predecessor vacating the appointment) who is in charge of designing, maintaining, and operating this program;
- b. Within thirty (30) days of entry of this Judgment, distribution of written materials on the meaning and requirements of this Judgment and the Antitrust Laws to Renown Health's Executive and Cardiology Staff;

- c. Within ninety (90) days of entry of this Judgment, In-Person Training on the meaning and requirements of this Judgment and the Antitrust Laws for Renown Health's Executive and Cardiology Staff;
- d. Annually no later than thirty (30) days after the anniversary date of entry of this Judgment, In-Person Training on the meaning and requirements of the Antitrust Laws; and
- e. Processes that ensure Renown Health's Executive and Cardiology Staff have ongoing access to written materials on the meaning and requirements of this Judgment and the Antitrust Laws, and that related questions can be answered by legal advisors as the need arises.

54. Within one hundred (100) days after entry of this Judgment, Renown Health shall submit to Plaintiff a verified confidential written report setting forth in detail the manner and form in which Renown Health intends to comply, is complying, and has complied with Paragraph 53. For the period covered by this report, the report shall include, but not be limited to:

- a. The name, title, business address, email address, and business phone number of the compliance officer appointed by Renown Health to design, maintain, and operate an Antitrust Compliance Program;
- b. The name, title, and business address (including identification of any Renown Health affiliate) of each Person to whom Renown Health distributed a copy of the Antitrust Compliance Program's written materials pursuant to Paragraph 53(b), and the date and manner of distribution to each;

- c. The name, title, and business address (including identification of any Renown Health affiliate) of each Person who received In-Person Training on the meaning and requirements of this Judgment and the Antitrust Laws pursuant to Paragraph 53(c); the date and location at which each Person was trained; the name, title, and business address of the Person who conducted the training; and a description in reasonable detail of the In-Person Training;
- d. Provide sufficient information and documentation to enable Plaintiff to determine independently whether Renown Health is in compliance with Paragraph 53; and
- e. Be verified by a notarized signature or sworn statement, or be self-verified in the manner set forth in 28 U.S.C. § 1746.

55. Annually within sixty (60) days after the anniversary date of entry of this Judgment, Renown Health shall submit to Plaintiff a verified confidential written report setting forth in detail the manner and form in which Renown Health intends to comply, is complying, and has complied with this Judgment. For the period covered by these reports, the reports shall include, but not be limited to:

- a. The name, title, business address, email address, and business phone number of the compliance officer appointed by Renown Health to design, maintain, and operate an Antitrust Compliance Program;
- b. The name, title, and business address (including identification of any Renown Health affiliate) of each Person who received In-Person Training on the meaning and requirements of the Antitrust Laws pursuant to Paragraph 53(c); the date and location at which each Person was trained; the name, title, and business

address of the Person who conducted the training; and a description in reasonable detail of the In-Person Training;

- c. Provide sufficient information and documentation to enable Plaintiff to determine independently whether Renown Health is in compliance with this Judgment; and
- d. Be verified by a notarized signature or sworn statement, or be self-verified in the manner set form in 28 U.S.C. § 1746.

56. For purposes of determining or securing compliance with this Judgment, and subject to any legally recognized privilege, Plaintiff may issue an Investigative Demand pursuant to NRS 598A.100. Renown Health shall timely and fully comply with any such Investigative Demands. Furthermore, and subject to any legally recognized privilege, and upon written request and with reasonable notice to Renown Health, Renown Health shall permit any duly authorized representative of Plaintiff:

- a. Access, during business office hours of Renown Health and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of Renown Health Related To compliance with this Judgment, which copying services shall be provided by Renown Health at the request of the authorized representative(s) of Plaintiff and at the expense of Renown Health; and
- b. Upon five (5) days' notice to Renown Health and without restraint or interference from Renown Health, to interview, either informally or on the record, officers,

directors, or employees of Renown Health, who may have their individual counsel present, regarding such matters.

57. No information or documents obtained pursuant to Paragraphs 52 to 56 or as otherwise required by this Judgment and which have been designated in good faith as “Confidential” by Renown Health, shall be divulged by Plaintiff to any Person other than the authorized representatives of Plaintiff, and their consultants, except in the course of legal proceedings for the purpose of securing compliance with this Judgment (including disclosure of documents at interviews on the record), to the United States Department of Justice Antitrust Division or Federal Trade Commission, or as otherwise required by law.
58. If at the time information or documents are furnished by Renown Health to Plaintiff, Renown Health represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Renown Health marks each pertinent page of such material, “Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,” then Plaintiff shall give Renown Health ten (10) calendar days’ notice prior to divulging such material in any legal proceeding.
59. It shall be a violation of this Judgment if Renown Health fails to abide by any term of this Judgment. For any violation(s) of this Judgment committed by Renown Health, Plaintiff may seek one or more of the following remedies:

- a. Payment of penalties in the amount of \$10,000 for each violation of this Judgment. Each separate violation of this Judgment shall be a separate offense, except that in a case of a violation through continuing failure to obey or neglect to obey the Judgment, each day of continuance of such failure or neglect shall be deemed a separate offense. A series of underlying acts shall not constitute a single violation;
- b. Equitable and injunctive relief, including, but not limited to, disgorgement of profits and restitution to the extent applicable;
- c. A civil contempt of court order from the Court and all remedies provided by law for such order; and
- d. Any other relief that the Court deems appropriate.

60. Renown Health shall pay to Plaintiff its reasonable attorney fees and costs incurred if Plaintiff is the prevailing party in a contested action to interpret, modify or enforce this Judgment.

61. All monetary awards paid pursuant to Paragraphs 59 to 60 or a resolution of such shall be deposited by Plaintiff in compliance with NRS 598A.260.

GENERAL TERMS

62. Unless this Court grants an extension, this Judgment shall terminate 5 years from the date of entry; however, that this Judgment may remain in effect after completion of such 5 year period solely for the purpose of determining or enforcing compliance during its 5 year effective period.

63. This Court retains jurisdiction to enable either Party to this Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

64. If any part of this Judgment is hereafter adjudged by this Court to be unenforceable, the remaining provisions of this Judgment shall stay in full force and effect.

APPROVAL AND ORDER

This Judgment is approved and hereby entered pursuant to 15 U.S.C. § 26 and NRS 598A.070 and .090. This lawsuit, in all other respects, is hereby dismissed with respect to Defendant Renown Health.

IT IS SO ORDERED:

UNITED STATES DISTRICT JUDGE

DATED:

CATHERINE CORTEZ MASTO
Attorney General of the State of Nevada
ERIC WITKOSKI
Consumer Advocate and Chief Deputy Attorney General
BRIAN ARMSTRONG, Bar No. 8761
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Attorneys for Plaintiff State of Nevada

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

**THE STATE OF NEVADA by its ATTORNEY
GENERAL CATHERINE CORTEZ MASTO,**

Plaintiff,

v.

RENOWN HEALTH,

Defendant.

Case No.: 3:12-cv-409

COMPLAINT

Plaintiff State of Nevada, through its Attorney General, complains against Defendant Renown Health ("Renown Health") as follows:

I. INTRODUCTION

1. This lawsuit challenges Renown Health's acquisition of Reno Heart Physicians ("RHP," defined in Paragraph 14), a leading cardiology medical practice in Reno, Nevada, after Renown Health acquired the other leading cardiology medical practice

in that area, Sierra Nevada Cardiology Associates ("SNCA," defined in Paragraph 11). Renown Health's acquisition of RHP and the resulting consolidation of RHP and SNCA under one firm creates an effect that "may be substantially to lessen competition or tend to create a monopoly" in violation of Section 7 of Clayton Act, 15 U.S.C. § 18, and the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*

2. Through Renown Health's acquisitions of RHP and SNCA, Renown Health became the employer of 97% of the physicians who provide cardiology services to commercial health insurers in the Reno Sparks Area (see Paragraphs 35 and 36). As a result, Renown Health has eliminated head to head competition in an already highly concentrated market, which increases the likelihood of higher prices for cardiology services in the Reno Sparks Area (defined in Paragraph 24). The acquisitions are also likely to produce anticompetitive coordination in Carson City, Gardnerville, and Minden, where Renown Health competes with another cardiology medical practice in those areas.
3. New entry or expansion by existing competitors is unlikely to restore competition in a sufficient or timely matter. One reason for this is that Renown Health required the physicians it acquired through the RHP and SNCA acquisitions to sign non-compete agreements that prohibit them from practicing cardiology services in or around the Reno Sparks Area for two years upon leaving the employment of Renown Health.

II. JURISDICTION, VENUE, AND COMMERCE

4. This lawsuit is filed by Plaintiff State of Nevada pursuant to Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and restrain Renown Health from violating Section 7

of the Clayton Act, 15 U.S.C. § 18. This Court has subject matter jurisdiction over the federal antitrust law claim pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337(a).

5. Plaintiff State of Nevada also alleges violation of the Nevada Unfair Trade Practice Act, NRS 598A *et seq.* The claims under federal and state law are based upon a common nucleus of operative fact. The Court has pendent jurisdiction over the state law claim because this claim is so related to the federal law claim that it forms part of the same case or controversy. 28 U.S.C. § 1367(a).
6. The Court has personal jurisdiction over Renown Health as Renown Health transacts business and is found within the District of Nevada. Specifically, Renown Health provides services, including cardiology services, within this District.
7. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(b) and (c).
8. Renown Health is engaged in interstate commerce and in activities that substantially affect interstate commerce. Renown Health is also engaged in intrastate commerce and in activities that substantially affect intrastate commerce.

III. THE PARTIES

9. Plaintiff State of Nevada is a sovereign state of the United States of America. Plaintiff brings this action by and through its Attorney General (a) as *parens patriae* on behalf of natural persons residing in the State of Nevada under federal antitrust law, (b) as *parens patriae* on behalf of persons residing in the State of Nevada pursuant to the Nevada Unfair Trade Practice Act, and (c) as the chief antitrust law

enforcement agency in the State of Nevada to the extent violations of the Nevada Unfair Trade Practice Act are alleged herein.

10. Defendant Renown Health (“Renown Health”) is a non-profit integrated healthcare system incorporated under and by virtue of the laws of the State of Nevada.

Renown Health is headquartered at 1155 Mill Street, Reno, Nevada 89502. Renown Health’s healthcare system primarily serves residents from the Reno Sparks Area, but also generally serves patients from the northern Nevada and northeastern California regions. In the Reno Sparks Area, Renown Health owns and operates Renown Regional Medical Center, a general acute care hospital with 808 licensed beds, and Renown South Meadows Medical Center, a general acute care hospital with 76 licensed beds. These licensed beds comprise about 64% of all the acute care licensed beds in this area. Renown Health also owns and operates Hometown Health Plan, through Hometown Health Plan, Inc. and Hometown Health Management Company, Inc., which is one of one the largest commercial health insurers in the Reno Sparks Area. In addition, Renown Health is the sole corporate member of the Nevada Heart Institute (“NHI”) and NHI-1, Inc. (“NHI-1”), Renown Health’s subsidiaries that provide cardiology services. As described in Paragraphs 11 to 17, Renown Health used NHI and NHI-1 to acquire RHP and SNCA, and employ the physicians it acquired through those acquisitions.

IV. THE ACQUISITIONS

11. On or about November 24, 2010, Arger, DiPaolo, Drummer, Fuller, Newmark &

Spring, a Nevada professional corporation doing business as Sierra Nevada

Cardiology Associates (“SNCA”), was converted to a Nevada for profit corporation. This corporation, SNCA, Inc., was then merged into Renown Health’s NHI. In addition, Renown Health purchased certain SNCA assets, including SNCA’s interest in a free-standing cardiac catheterization laboratory and its goodwill, for approximately \$3.4 million. This merger of SNCA, Inc. into Renown Health’s NHI (“SNCA acquisition”) became effective on January 1, 2011, occurred within the State of Nevada, and constitutes an acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18, and the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*

12. As part of the SNCA acquisition, 15 of the physicians associated with SNCA signed employment agreements with NHI on or about November 24, 2010. These agreements provided that each such physician would become employed by NHI for a specified numbers of years, for a salary and certain benefits. The employment agreements also contained “covenants,” including a covenant of non-solicitation, a covenant of non-interference, and a covenant not-to-compete (“non-compete covenants”). The effective date of the employment agreements between NHI and each of the SNCA physicians was January 1, 2011. All 15 physicians practiced primarily and regularly in the Reno Sparks Area. Prior to NHI hiring these physicians as employees, Renown Health did not employ any cardiologists.

13. The non-compete covenants contained in the employment agreements between NHI and each physician formerly affiliated with SNCA provides, *inter alia*, that a NHI-employed cardiologist who chooses to leave NHI’s employ is barred for two years from negotiating or entering into an agreement to provide cardiology services at any

hospital, medical practice or medical facility providing cardiology services at a location within 50 miles of the physician's principal place of practice with NHI, or from owning, operating, managing, becoming an employee, or in any way becoming connected with any hospital, medical practice or medical facility providing cardiology services at a location within 50 miles of the physician's principal place of practice with NHI. The non-compete covenants also bar for two years such physicians from soliciting or contacting former patients, or causing any entity with a contractual relationship with NHI from terminating that relationship. If any former SNCA cardiologist violates the non-compete covenants' terms, he or she is required to pay NHI, *inter alia*, the greater of (1) \$150,000 plus one year's salary, or (2) \$750,000.

14. On or about March 17, 2011, Berndt, Chaney-Roberts, Davee, Ganchan, Ichino, Juneau, Noble, Seher, Smith, Swackhamer, Thompson, Williamson and Zebrack, Ltd., a professional corporation doing business as Reno Heart Physicians ("RHP") was converted to a Nevada for profit corporation. This corporation, RHP, Inc., was then merged into Renown Health's NHI-1. In addition, Renown Health purchased certain RHP assets for approximately \$4 million. This merger of RHP into Renown Health's NHI-1 ("RHP acquisition") became effective on March 29, 2011, occurred within the State of Nevada, and constitutes an acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18, and the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*

15. As part of the RHP acquisition, 17 of the physicians associated with RHP signed employment agreements with NHI on or about March 17, 2011. Like the SNCA

employment agreements, these agreements provided that each such physician would become employed by NHI for a specified numbers of years, for a salary and certain benefits. The employment agreements also contained non-compete covenants. The effective date of the employment agreements between NHI and each of the RHP physicians was March 29, 2011. Of the 17 cardiologists affiliated with RHP who became NHI employees, 16 practiced primarily and regularly in the Reno Sparks Area, with the other cardiologist practicing in Carson City.

16. The non-compete covenants contained in the employment agreements between each RHP physician and NHI are identical or virtually identical to the non-compete covenants in the SNCA employment agreements. That is, the non-compete covenants contained in the employment agreements of each physician formerly affiliated with RHP provides, *inter alia*, that a NHI-employed cardiologist who chooses to leave NHI's employ is barred for two years from negotiating or entering into an agreement to provide cardiology services at any hospital, medical practice or medical facility providing cardiology services at a location within 50 miles of the physician's principal place of practice with NHI, or from owning, operating, managing, becoming an employee, or in any way becoming connected with any hospital, medical practice or medical facility providing cardiology services at a location within 50 miles of the physician's principal place of practice with NHI. The non-compete covenants also bar for two years such physicians from soliciting or contacting former patients, or causing any entity with a contractual relationship with NHI from terminating that relationship. If any former RHP cardiologist violates the

non-compete covenants' terms, he or she is required to pay NHI, *inter alia*, the greater of (1) \$150,000 plus one year's salary, or (2) \$750,000.

17. In summary, prior to the SNCA acquisition, Renown Health did not employ, directly or indirectly, any cardiologists. After the SNCA acquisition, Renown Health, through NHI, employed 15 cardiologists in the Reno Sparks Area which competed with RHP at that time. After the RHP acquisition, Renown Health, through NHI, employed 16 more cardiologists in the Reno Sparks Area (and one cardiologist in Carson City). The effect of the SNCA and RHP acquisitions was to combine 31 cardiologists practicing in the Reno Sparks Area into a single firm under the control of Renown Health, the largest hospital system in that area.

V. THE RELEVANT MARKET

A. Relevant Service Market

18. The relevant service market in which to assess the effect of the RHP acquisition is the sale of cardiology services to commercial health insurers. Cardiology services are a cluster of medical professional services provided to adults in general or non-invasive cardiology (e.g., medical management of heart and vascular conditions), invasive cardiology (e.g., cardiac catheterizations), interventional cardiology (e.g., angioplasty, placement of stents), and electrophysiology (e.g., placement of pacemakers and defibrillators). The licensed physicians that provide cardiology services are collectively called cardiologists. It is appropriate to evaluate the RHP acquisition's effect across the entire cluster of cardiology services, rather than analyzing each subspecialty of cardiology services independently, because the

group of services is offered by the same competitors under similar competitive conditions.

19. Cardiology services exclude pediatric cardiology services or services provided by cardiac surgeons. These services are not reasonably interchangeable with cardiology services, and commercial health insurers and their health plan members cannot substitute these services for cardiology services in response to a price increase. For instance, a cardiac surgeon that provides open heart surgery is not trained or qualified to perform procedures that comprise the interventional cardiology and electrophysiology subspecialties of cardiology services.
20. Commercial health insurers include managed care organizations (such as Aetna, Anthem Blue Cross Blue Shield, Renown Health's Hometown Health Plan, Saint Mary's Health Plans, United Healthcare, or other HMOs or PPOs) and rental networks (such as Beech Street/Multiplan and First Health). Rental networks serve as primary or secondary health care provider networks used by self-funded employers or commercial health insurers looking for network coverage or discounts outside of their own networks.
21. The market for the sale of cardiology services to commercial health insurers excludes sales of such services to government payers. The primary government payers are the federal government's Medicare program (coverage for the elderly and disabled), the joint federal and state Medicaid programs (coverage for low income persons), and the federal government's TRICARE program (coverage for military personnel and families). The federal government sets the rates and schedules at

which the government pays health care providers, such as Renown Health, for services provided to individuals covered by Medicare, Medicaid, and TRICARE.

These rates are not subject to negotiation.

22. In contrast, commercial health insurers negotiate rates with health care providers and sell health insurance policies to their customers, such as employers and employees, who pay premiums for the policies. Generally, the rates that commercial health insurers pay health care providers are substantially higher than those paid by government payers (Medicare, Medicaid, and TRICARE).
23. There are no reasonable substitutes or alternatives to cardiology services sold to commercial health insurers. A cardiology services provider's negotiations with commercial health insurers are separate from the process used to determine the rates paid by government payers, and a cardiology services provider could, therefore, target a price increase to just commercial health insurers. Commercial health insurers cannot shift to government rates in response to an increase in rates for cardiology services sold to commercial health insurers, and cardiology patients who are ineligible for Medicare, Medicaid, or TRICARE cannot substitute those programs for commercial health insurance in response to a price increase for commercial health insurance. Hence, a hypothetical monopolist provider of cardiology services sold to commercial health insurers could profitably raise prices for those services by a small but significant amount.

B. Relevant Geographic Market

24. The relevant geographic market is no larger than the Reno-Sparks Metropolitan Statistical Area, which is comprised of Washoe and Storey Counties in the State of Nevada (“Reno Sparks Area”). Metropolitan Statistical Areas are geographic areas defined by the United States Office of Management and Budget for use in federal statistical activities. The Reno Sparks Area includes the City of Reno, with a 2011 population of 222,801 and the City of Sparks with a 2011 population of 92,302, as estimated by the Nevada State Demographer’s Office.
25. The appropriate geographic market is determined by examining the geographic boundaries within which a hypothetical monopolist for cardiologist services could profitably raise prices by a small but significant amount.
26. Commercial health insurers must have a strong representation of Reno Sparks Area cardiologists in their provider networks in order to have a marketable plan to their prospective and current health plan members who reside in the Reno Sparks Area. This is because Reno Sparks Area residents have a clear preference to obtain cardiology services in the Reno Sparks Area. This is particularly the case for cardiology services requiring emergency care, such as a heart attack where shorter driving distances can be the difference between life and death, and for Reno Sparks Area residents who have chronic heart conditions and need to seek care on a frequent and convenient basis. Commercial health insurers could not steer their health plan members to cardiologists outside of the Reno Sparks Area in response to rate increases from Reno Sparks Area cardiologists. Moreover, cardiologists

outside of the Reno Sparks Area do not meaningfully compete with cardiologists in the Reno Sparks Area for cardiology patients in the Reno Sparks Area. Thus, a hypothetical monopolist that controlled all of the cardiologists in the Reno Sparks Area could profitably increase rates by at least a small but significant amount.

27. Accordingly, the relevant market within the meaning of Section 7 of the Clayton Act and the Nevada Unfair Trade Practice Act is cardiology services sold to commercial health insurers in the Reno Sparks Area (“relevant market”).

VI. MARKET STRUCTURE AND CONCENTRATION

28. Prior to the SNCA and RHP acquisitions by Renown Health, SNCA and RHP were the leading providers of cardiology services in the Reno Sparks Area. They substantially competed on many fronts, such as for referrals, the breadth of cardiology services provided, quality of service, name recognition and reputation, location, appearance of facilities, and price. Commercial health insurers, cardiology patients in the Reno Sparks Area, and primary care physicians in the Reno Sparks Area who refer their patients to local cardiologists viewed SNCA and RHP as their first and second choices for cardiology services in the Reno Sparks Area.

29. Moreover, before the acquisitions, SNCA and RHP both competed for cardiology patients that lived in other parts of Nevada, such as the cities or towns of Carson City, Elko, Fallon, Gardnerville, Minden, and Winnemucca. This competition generally involved cardiologists traveling to those cities or towns on a regularly scheduled basis and operating clinics that provided non-invasive cardiology services to the local residents (however, both SNCA and RHP had office locations in Carson

City). To the extent those patients required invasive, interventional, or electrophysiology cardiology services, the patients would travel to the Reno Sparks Area, wherein SNCA or RHP physicians would subsequently perform those services.

30. After the SNCA acquisition but before the RHP acquisition (the timeframe between January 1, 2011 and March 29, 2011), Renown Health and RHP were the leading providers of cardiology services in the Reno Sparks Area. They substantially competed on many fronts, such as for referrals, the breadth of cardiology services provided, quality of service, name recognition and reputation, location, appearance of facilities, and price. Commercial health insurers, cardiology patients in the Reno Sparks Area, and primary care physicians in the Reno Sparks Area who refer their patients to local cardiologists viewed Renown Health and RHP as their first and second choices for cardiology services in the Reno Sparks Area.

31. The availability and number of alternative cardiologist service providers are the primary source of a commercial health insurer's leverage to negotiate competitive rates on behalf of its health plan members. Thus, an acquisition that reduces a commercial health insurer's choice of cardiology services providers reduces the commercial health insurer's leverage when negotiating with cardiologist services providers, and can lead to higher prices. This effect is even more pronounced when the credible alternatives are relatively low.

32. As of March 29, 2011, the SNCA and RHP acquisitions reduced the number of cardiology services competitors in the Reno Sparks Area from three to two. The other competitor was one cardiologist that has an independent practice. However,

since March 2011, Saint Mary's Regional Medical Center, a general acute care hospital in the Reno Sparks Area, recruited three cardiologists that now practice in the Reno Sparks Area. Moreover, two of the cardiologists that Renown Health acquired through the SNCA and RHP acquisitions have since left the Reno Sparks Area.

33. As of March 29, 2011, of the cardiology medical practices providing the cluster of cardiology subspecialties (non-invasive, invasive, interventional, and electrophysiology) required to meet the needs of Reno Sparks Area patients with heart conditions, the acquisitions have reduced the number of cardiology services competitors in the Reno Sparks Area from two to one. This remains the case.

34. Furthermore, as of March 29, 2011, the SNCA and RHP acquisitions reduced the number of cardiology services competitors in Elko, Fallon, and Winnemucca from two to one. However, in Carson City, Gardnerville, and Minden, the acquisitions did not materially change the number of cardiology services competitors since a new cardiology medical practice, Carson Tahoe Cardiology, originally comprised of four SNCA physicians and three RHP physicians that chose to not become employees of Renown Health, formed around this same time. Carson Tahoe Cardiology, owned by Carson Tahoe Regional Healthcare, a general acute care hospital in Carson City, focused and continues to focus on serving cardiology patients in those areas and areas in northeastern California.

35. Under relevant case law and the United States Department of Justice and Federal

Trade Commission Merger Guidelines ("Merger Guidelines"), the RHP acquisition by

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Renown Health is presumptively unlawful in the market for cardiology services sold to commercial health insurers in the Reno Sparks Area. Renown Health's post-RHP acquisition market share is 97% and 88%, based on the number of cardiologists serving that market as of March 29, 2011 and the date of this Complaint's filing. These very high market shares easily surpass levels that have been found presumptively unlawful by the Supreme Court.

36. The Merger Guidelines measure market concentration using the Herfindahl-Hirschman Index ("HHI"). Under this test, an acquisition is presumed likely to create or enhance market power (and presumed illegal) when the post-acquisition HHI exceeds 2500 points and the acquisition increases the HHI by more than 200 points. The market concentration levels here exceed these thresholds by an extraordinary margin. Before the RHP acquisition, the relevant market had an HHI of 4707, which the Merger Guidelines classify as a highly concentrated market. The post-RHP acquisition HHI for cardiology services sold to commercial health insurers in the Reno Sparks Area increased 4688 points to 9385 as of March 29, 2011. Based on current market conditions, the post-RHP acquisition HHI for the relevant market is 7815. The market share percentages and HHI figures are summarized in the following table.

| Market Share Percentages | | | |
|---------------------------------|---|---|---|
| | Pre-RHP Acquisition Market Share (1/1/2011) | Post-RHP Acquisition Market Share (3/29/2011) | Post-RHP Acquisition Market Share (current) |
| RHP | 50% | -- | -- |
| Renown Health | 47% | 97% | 88% |
| Saint Mary's | -- | -- | 9% |

| | | | |
|--|------|----|------|
| Independent Cardiologist | 3% | 3% | 3% |
| HHIs | | | |
| Pre-RHP Acquisition HHI (1/1/2011) | 4707 | | 4707 |
| Post-RHP Acquisition HHI (3/29/2011 and current) | 9385 | | 7815 |
| HHI Increase (3/29/2011 and current) | 4688 | | 3108 |

VII. ANTICOMPETITIVE EFFECTS

37. The RHP acquisition may substantially lessen competition in the following ways, among others, in violation of Section 7 of the Clayton Act and the Nevada Unfair Trade Practice Act:

- a. By eliminating actual, direct, and substantial competition between Renown Health and RHP in the market for cardiology services sold to commercial health insurers in the Reno Sparks Area;
- b. By increasing the ability of Renown Health to unilaterally raise prices for cardiology services sold to commercial health insurers in the Reno Sparks Area (see Paragraphs 38 to 41); and
- c. By increasing the likelihood of coordinated interaction between cardiology services competitors in Carson City, Gardnerville, and Minden (see Paragraphs 42 and 43).

A. Loss Of Price Competition And The Increased Bargaining Leverage Of Renown Health

38. By eliminating competition between SNCA and RHP, the acquisition vests Renown Health with an increased ability and incentive to demand supra-competitive

reimbursement rates from commercial health insurers and their membership. Renown Health has now become a “must have” cardiology services provider for commercial health insurers seeking to do business in the Reno Sparks Area because commercial health insurers are no longer able to offer a commercially viable provider network without including Renown Health. Commercial health insurers no longer have the ability to drop Renown Health from their provider networks, or even credibly threaten to do so, as it relates to cardiology services before the RHP acquisition. For instance, cardiology is considered an essential medical specialty to be adequately reflected in a commercial health insurer’s provider network. Accordingly, in the past decade, no commercial health insurer has offered a provider network in the Reno Sparks Area that did not contain SNCA and/or RHP, as they would have to do without agreeing to Renown Health’s rates today. Thus, commercial health insurers must either reach agreement with Renown Health, likely at higher rates, or offer an unmarketable or unattractive provider network to their members that omit Renown Health’s cardiologists that practice in the Reno Sparks Area.

39. Furthermore, Renown Health’s ownership of the commercial health insurer Hometown Health Plan may further increase its ability and incentive to increase rates. If other commercial health insurers must pay higher rates to access Renown Health’s cardiologists, Renown Health would benefit because Hometown Health Plan would capture some of the business of its disadvantaged commercial health insurance competitors.

40. Price increases imposed on commercial health insurers resulting from the RHP acquisition will be passed on to their health plan membership, *i.e.* local employers and their employees. Self-funded employers rely on commercial health insurers to provide health care provider networks, negotiate rates with health care providers such as cardiology services providers, and provide administrative support. Self-funded employers themselves pay the full cost of their employees' health care claims. As a result, self-funded employers immediately and directly bear the burden of higher rates. Fully-insured employers are also inevitably harmed by higher rates because commercial health insurers pass on at least a portion of rate increases to these customers.

41. Employers, in turn, must pass on their increased health care costs to their employees, in whole or in part. Employees will bear these costs in the form of higher premiums, higher co-pays, reduced coverage, or restricted services. Some Reno Sparks Area residents may even forgo or delay necessary cardiology services because of the higher costs.

B. The Acquisition Would Make Anticompetitive Coordination Substantially More Likely

42. The cardiology services market in Carson City, Gardnerville, and Minden possesses several structural features that increase the likelihood of coordination after Renown Health's acquisition of RHP: a small number of significant competitors, homogeneity of the relevant service, relatively inelastic demand for the relevant service, and a history of collusive conduct among providers of cardiology services. For instance,

prior to Renown Health's acquisitions of SNCA and RHP, SNCA and RHP inappropriately shared confidential information and coordinated their communication with general acute care hospitals regarding certain fees related to the delivery of cardiology services. The communications also involved preventing competition from cardiologists not affiliated with SNCA or RHP. Also, prior to the acquisitions, Renown Health engaged in anticompetitive communications with Carson Tahoe Regional Healthcare, the employer of the Carson Tahoe Cardiology cardiologists identified in Paragraph 34, regarding cardiology services. Although Carson Tahoe Cardiology does not provide its services in the Reno Sparks Area or meaningfully serve cardiology patients from the Reno Sparks Area, Renown Health and Carson Tahoe Cardiology do compete in Carson City, Gardnerville, and Minden.

43. The acquisition of RHP by Renown Health and the presence of Carson Tahoe Cardiology as a cardiology services competitor in Carson City, Gardnerville, and Minden would facilitate the likelihood of coordination among these competitors that would harm commercial health insurers and its members. According to the Merger Guidelines, coordination need not rise to the level of an explicit agreement. It may involve "a common understanding that is not explicitly negotiated[,]" or even merely "parallel accommodating conduct not pursuant to a prior understanding." For example, Renown Health and Carson Tahoe Cardiology would have the incentive and ability to coordinate competitive initiatives, such as deferring the expansion of service areas based on a mutual recognition of which cardiology services providers primarily serve specific geographic areas. This could impact the Reno Sparks Area

and other areas outside of Carson City, Gardnerville, and Minden. This form of coordination is easier when there are fewer competitors, the competitors personally know each other, and they can readily identify one another's primary service areas for cardiology services.

VIII. ENTRY CONDITIONS

44. Neither new entry nor expansion by existing competitors will deter or counteract the RHP acquisition's likely harm to competition in the relevant market.
45. A significant barrier to entry into the relevant market is the need to recruit a sufficient number of cardiologists with appropriate training, experience, and areas of specialization to create a practice large enough so that commercial health insurers who are contracting with such a practice are not required, as a matter of practical necessity, to also contract with Renown Health. Also, because cardiologists within a practice must provide coverage for each other, unless a practice can recruit a sufficient number of cardiologists in each necessary subspecialty, any cardiologists recruited to the market will not have a sufficient number of other cardiologists with whom they can share responsibilities. Thus, the inability to recruit a sufficient number of cardiologists in appropriate subspecialties to achieve this scale is a barrier to entry.
46. New entry is also unlikely to occur in a timely manner because recruitment of a sufficient number of cardiologists to provide a competitive constraint to Renown Health would take more than two years.

47. Also, new competition from cardiologists employed by Renown Health who would leave to open or join another cardiology medical practice in the Reno Sparks Area is unlikely to occur. This is because of the non-compete covenants described in Paragraphs 13 and 16. Moreover, Renown Health has enforced those non-compete covenants.

IX. EFFICIENCIES

48. Extraordinary acquisition-specific and cognizable efficiencies are necessary to justify the RHP acquisition in light of its vast potential to harm competition. Such efficiencies are lacking here. To the extent any of Renown Health's claimed efficiencies are substantiated and achievable, they are not acquisition-specific. For instance, RHP could have achieved certain efficiencies through affiliation with another interested partner, such as Saint Mary's Regional Medical Center, which would have been far less restrictive of competition.

X. FIRST CAUSE OF CAUTION

Violation of Clayton Act

49. The preceding paragraphs are incorporated as if set forth herein.

50. Renown Health's acquisition of RHP may substantially lessen competition in the sale of cardiology services to commercial health insurers in the Reno Sparks Area in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

XI. SECOND CAUSE OF CAUTION

Violation of Nevada Unfair Trade Practice Act

51. Paragraphs 1 to 48 are incorporated as if set forth herein.

52. Renown Health's acquisition of RHP may substantially lessen competition in the sale of cardiology services to commercial health insurers in the Reno Sparks Area in violation of the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*, specifically NRS 598A.060(1)(f).

XII. PRAYER FOR RELIEF

53. Accordingly, Plaintiff State of Nevada, requests that this Court:

- a. Adjudge Renown Health's acquisition of RHP and the employment agreements with former RHP cardiologists violate Section 7 of the Clayton Act, 15 U.S.C. § 18;
- b. Adjudge Renown Health's acquisition of RHP and the employment agreements with former RHP cardiologists violate the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*, specifically NRS 598A.060(1)(f);
- c. Permanently enjoin and restrain Renown Health from enforcing any non-compete covenants in its employment agreements with former SNCA or RHP physicians;
- d. Compel Renown Health, including any of its subsidiaries, joint ventures, successors or assigns, and all persons acting on behalf of it, to provide Plaintiff with notification at least 30 days prior to any acquisition, in whole or in part, involving cardiology services;
- e. Compel Renown Health to participate in antitrust law compliance training subject to the approval of Plaintiff;
- f. Award Plaintiff the maximum civil penalties against Renown Health as allowed by NRS 598A.170;

- g. Award Plaintiff its reasonable attorneys fees and costs of this action; and
- h. All other relief as this Court may deem just and proper.

Dated: August 6, 2012

Respectfully submitted,

PLAINTIFF STATE OF NEVADA

CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada
ERIC WITKOSKI, Consumer Advocate and Chief Deputy Attorney General

/s/ Brian Armstrong

By: BRIAN ARMSTRONG
Senior Deputy Attorney General
Bureau of Consumer Protection

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2012, I caused a true and complete copy of Plaintiff's Complaint to be served on the following counsel of record via electronic mail (as previously stipulated) and through the Case Management/Electronic Case Files (CM/ECF) system (to the extent counsel has registered with the CM/ECF for this action).

CATHERINE CORTEZ MASTO, Attorney General
ERIC WITKOSKI, Consumer Advocate and
Chief Deputy Attorney General

/s/ Brian Armstrong

By:

BRIAN ARMSTRONG
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