UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SAINT FRANCIS HOSPITAL AND MEDICAL CENTER, INC., Plaintiff, v. HARTFORD HEALTHCARE CORPORATION, HARTFORD HOSPITAL, HARTFORD HEALTHCARE MEDICAL GROUP, INC., and INTEGRATED CARE PARTNERS, LLC, Defendants.	No. 3:22-cv-00050-SVN April 17, 2023

DEFENDANTS' OPPOSITION TO PLAINTIFF'S TARDY MOTION TO STRIKE

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Defendants Hartford HealthCare Corporation, Hartford Hospital, Hartford HealthCare Medical Group, Inc., and Integrated Care Partners, LLC (collectively "Hartford HealthCare") respectfully submit this opposition to Plaintiff Saint Francis Hospital and Medical Center, Inc.'s ("Plaintiff" or "St. Francis") Tardy Motion to Strike the Fifth, Sixth, and Seventh Defenses set forth in Hartford HealthCare's Answer to the Amended Complaint, Dkt. 107 ("Motion" or "Mot.").[1]

INTRODUCTION

Plaintiff's attempt to strike from the case three of the defenses set forth in Hartford HealthCare's Answer, on the grounds that they are insufficiently pled, is flawed several times over. To prevail on a Motion to Strike an affirmative defense, the moving party must establish not only that the defense is truly an affirmative defense, but also all three prerequisites of a Motion to Strike by "show[ing] that: (1) there is no question of fact which might allow the defense to succeed; (2) there is no question of law which might allow the defense to succeed; and (3) the plaintiff would be prejudiced by inclusion of the defense." *Alfonso v. FedEx Ground Packaging Sys., Inc.*, 2022 WL 4545888, at *2 (D. Conn. Sept. 29, 2022) (citing, among other authority, *GEOMC Co. v. Calmare Therapeutics Inc*., 918 F.3d 92, 98 (2d Cir. 2019)). As the Court recently observed, "[b]ecause striking a pleading is a 'drastic remedy,' motions to strike are generally disfavored and require the moving party to 'clearly show that the challenged matter has no bearing on the subject

[1] As Plaintiff concedes (Mot. at 13), its Motion was untimely by seven days. *See* Fed. R. Civ. P. 12(f)(2) ("The court may strike . . . an insufficient defense . . . on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading."). On this basis alone, the Motion should be denied (although, even if it had been timely, the Motion lacks merit, as described in detail below). *See Hill v. Sandra Cobb & Cobb Bail Bonding Co.,* 2014 WL 12769394, at *2 (N.D. Miss. July 30, 2014) ("Without ruling on the applicability of the affirmative defenses in question, the court finds that plaintiff's motion was not timely filed and should be denied."); *Harvey v. Lake Buena Vista Resort, LLC,* 568 F. Supp. 2d 1354, 1359 (M.D. Fla. 2008), *aff'd*, 306 F. App'x 471 (11th Cir. 2009) (denying motion to strike affirmative defenses where that motion was not filed within the time limit set out in Rule 12(f)).

matter of the litigation.'" *Id.* (citation omitted). Plaintiff cannot meet any, much less all, elements of the required showing.

Most fundamentally, Plaintiff's Motion is based on a faulty assumption. Read properly, the three challenged defenses are not affirmative defenses at all, regardless of how they were labeled in the Answer. *See Poyneer v. New York State United Tchrs*, 2023 WL 236499, at *1 (N.D.N.Y. Jan. 18, 2023) ("Generally, a 'pleader will not be penalized' for pleading a defense that is not an affirmative defense." (quoting 5 C. Wright & A. Miller, Federal Practice & Procedure § 1271 (4th ed.)); *Town & Country Linen Corp. v. Ingenious Designs LLC*, 2020 WL 3472597, at *5 (S.D.N.Y. June 25, 2020) ("[C]ourts have recognized the inherent imprecision involved in the assertion of affirmative defenses, such that the 'cautious pleader is fully justified in setting up as affirmative defenses anything that might possibly fall into that category, even though that approach may lead to pleading matters as affirmative defenses that could have been set forth in simple denials.'" (citation omitted)).

Rather, the defenses at issue in Plaintiff's Motion are specific denials that negate allegations in the Amended Complaint or elements of Plaintiff's claims, thereby challenging Plaintiff's ability to carry its ultimate burden of persuasion. As described below, Hartford HealthCare's Fifth Defense (asserting that Hartford HealthCare's conduct alleged in the Amended Complaint was taken in good faith and in pursuit of legitimate business interests), as well as its Sixth and Seventh Defenses (stating that St. Francis's challenged conduct was lawful and procompetitive), undermine allegations in the Amended Complaint regarding elements of both Plaintiff's antitrust and tortious interference claims. And, even if the three defenses are considered as affirmative defenses, they are sufficiently supported by ample factual allegations in the record,

are based on the very same activities for which Plaintiff seeks damages, and are the subject of Plaintiff's extensive discovery requests, including those propounded almost 12 months ago.

In short, beyond failing to show that the defenses in question are truly affirmative defenses, Plaintiff's Motion has failed to show that there is no question of fact which might allow the defense to succeed, that there is no question of law which might allow the defense to succeed, and that the plaintiff would be prejudiced by inclusion of the defenses. Plaintiff's Motion should be denied.

BACKGROUND

I. Plaintiff Has Been on Notice of Hartford HealthCare's Defenses Since the Beginning of the Case

On February 1, 2022, Plaintiff filed its Amended Complaint. Dkt. 33. On February 23, 2022, Hartford HealthCare moved to dismiss the Amended Complaint in its entirety on the grounds that St. Francis lacked antitrust standing and for failure to state a claim. Dkt. 42. Plaintiff's assertion in its Motion that Hartford HealthCare's March 7, 2023 letter is the "first time" that Hartford HealthCare claimed that conduct resulted in procompetitive effects, Mot. at 3, is incorrect and belied by the record. In its February 23, 2022 Memorandum in Support of Its Motion to Dismiss, Hartford HealthCare described that its actions in recruiting and employing doctors, and then integrating them into Hartford HealthCare's system of clinically-integrated healthcare, were procompetitive for various reasons, including, among other benefits, enhanced focus on providing better care for patients, increased quality and access through clinical coordination and development of expertise, cost-saving benefits (including facilitation of value-based models), and reduced administrative workloads and other benefits for doctors to avoid disruptions to patient care. *See* Dkt. 43, at 2, 8-10, 13-14.

That Plaintiff knew about Hartford HealthCare's intent to defend the case based, in part, on its conduct's procompetitive effects is confirmed by the discovery that Plaintiff commenced

almost 12 months ago, while the Motion to Dismiss was pending. Indeed, in April 2022, Plaintiff served Hartford HealthCare with numerous document requests, including a large number seeking documents about the benefits and effects on competition of the alleged acquisitions and referral practices of Hartford HealthCare, and the Mako robot arrangement. *See, e.g.,* Appendix 1 (Plaintiff's First Request for Production of Documents), at Req. Nos. 49 (seeking "[a]ll documents relating to any actual or potential effects on competition" of the alleged conduct); 50(b) ("All documents relating to the value, benefits, costs, and advantages" of any physician acquisitions); 55 ("All documents that discuss Your reasons and/or strategies for employing physicians . . . ."); 65 ("All documents relating to Your purchase of the Mako robot, including all documents relating to exclusivity . . . [and] benefits from such exclusivity."); *see also id*. at Req. Nos. 14-15, 21-24, 36-37, 42-43, 47, 51, 64, 68, 72, 74.

On February 13, 2023, the Court granted Hartford HealthCare's Motion to Dismiss Plaintiff's claim based on its theory of liability related to Hartford HealthCare's refusal to participate in tiered networking and other similar programs, but otherwise denied Hartford HealthCare's Motion to Dismiss. *Saint Francis Hosp. & Med. Ctr., Inc. v. Hartford HealthCare Corp.*, 2023 WL 1967133 (D. Conn. Feb. 13, 2023). In denying the Motion to Dismiss in part, this Court expressly noted that Hartford HealthCare intended to defend against Plaintiff's remaining claims based on the procompetitive effects of the alleged conduct. *Id.* at *16 ("Of course, HHC can later present evidence that the hiring or acquiring of the physicians at issue *is in fact pro-competitive, as a defense against liability*." (emphasis added)).

In accordance with the time set out in Federal Rule of Civil Procedure 12(a)(4), on February 27, 2023, Hartford HealthCare timely filed its Answer listing 23 defenses to Saint Francis's Amended Complaint. Dkt. 104. A month later, but a week after the deadline, on March 27, 2023,

St. Francis filed its Motion, challenging three of those defenses (hereinafter, the "Challenged Defenses"), which are recited below.

Fifth Defense. "Plaintiff's claims are barred, in whole or in part, because any conduct by or on behalf of Hartford HealthCare alleged in the Complaint was taken independently in good faith and was legally or equitably protected by applicable privileges, and/or was undertaken in pursuit of legitimate business interests." *Id.* at 109-10.

Sixth Defense. "Any conduct engaged in by Hartford HealthCare was not anticompetitive and cannot support a claim sounding in antitrust. Indeed, at all times Hartford HealthCare's actions and practices that are the subject of the Complaint were lawful, procompetitive, justified under the rule of reason, and caused no injury to competition." *Id*. at 110.

Seventh Defense: "Insofar as Plaintiff alleges that Hartford HealthCare violated the antitrust rule of reason, such claims are barred, among other reasons, because the Complaint does not allege a properly defined relevant market, because any restraints complained of are ancillary to legitimate, procompetitive activities, and because the Complaint does not allege how procompetitive effects of Hartford HealthCare's legitimate activities are outweighed by anticompetitive effects." *Id*.

LEGAL STANDARD

Motions to strike under Rule 12(f) are "generally disfavored" and "infrequently granted" because "striking a [part] of a pleading is a drastic remedy." *See Luck v. McMahon*, 2021 WL 4248887, at *11 (D. Conn. Sept. 17, 2021) (quoting *Gierlinger v. Town of Brant*, 2015 WL 3441125, at *1 (W.D.N.Y. May 28, 2015)). "[T]he Second Circuit has long held that courts 'should not tamper with the pleadings unless there is a strong reason for so doing. " *AlexSam, Inc. v. Aetna, Inc*., 2021 WL 3268853, at *3 (D. Conn. July 30, 2021) (quoting *Lipsky v.*

Commonwealth United Corp., 551 F.2d 887, 893 (2d Cir. 1976)). For this reason, a plaintiff seeking to strike an affirmative defense has a heavy burden to "show that: (1) there is no question of fact which might allow the defense to succeed; (2) there is no question of law which might allow the defense to succeed; and (3) the plaintiff would be prejudiced by inclusion of the defense." *Alfonso*, 2022 WL 4545888, at *2 (citing *GEOMC*, 918 F.3d at 98).

ARGUMENT

I. The Challenged Defenses Are Not Affirmative Defenses

Plaintiff's Motion to Strike fails at the threshold because it is based on the erroneous premise that the Challenged Defenses are, as a legal matter, "affirmative defenses." The Second Circuit's decision in *GEOMC*, 918 F.3d 92, applied the plausibility standard from *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), only to "affirmative defenses." An affirmative defense "is defined as 'a defendant's assertion raising new facts and arguments that, if true, will defeat the plaintiff's . . . claim, ***even if all allegations in the complaint are true***.'" *Saks v. Franklin Covey Co.*, 316 F.3d 337, 350 (2d Cir. 2003) (emphasis added) (citation and alteration omitted). "[T]he basic concept of an affirmative defense is an ***admission of the facts alleged in the complaint***, coupled with the assertion of some other reason defendant is not liable." *Instituto Nacional de Comercializacion Agricola (Indeca) v. Cont'l Ill. Nat'l Bank & Trust Co.*, 576 F. Supp. 985, 989 (N.D. Ill. 1983) (emphasis added). Where defenses negate allegations in a complaint or elements of Plaintiff's claims, such defenses do not constitute "affirmative defenses" and instead are treated as specific denials, which are not subject to *Twombly*. *See Rich v. Miller*, 2022 WL 7748176, at *4 (S.D.N.Y. Oct. 4, 2022) ("Some defenses are not governed by the test set forth in *GEOMC Co.* because the defense essentially amounts to a denial of the factual allegations supporting the opposing party's claim, rather than constituting an 'affirmative' defense."); *Town & Country Linen*, 2020 WL 3472597, at *11 (denying a motion to strike where the challenged defense was "clearly

a denial, and a denial is not required to be pled in conformance with *GEOMC*"). Affirmative defenses are defenses for which "the defendant has *both* the burden of production *and* the burden of persuasion." *See Moore v. Kulicke & Soffa Indus., Inc.,* 318 F.3d 561, 566 (3d Cir. 2003) (emphasis added). By contrast, "a denial, as opposed to an affirmative defense, will simply shift the burden of production to the defendant to present evidence that would tend to rebut the plaintiff's case, *while the burden of persuasion remains with the plaintiff*." *Id.* (emphasis added).

Here, the three Challenged Defenses are not affirmative defenses irrespective of how they were labeled in the Answer. *See*, cases cited *supra* at 2. Rather, they are properly treated as specific denials that negate allegations in the Amended Complaint or elements of Plaintiff's claims, and challenge Plaintiff's ability to carry its ultimate burden of persuasion.

A. The Answer's Sixth and Seventh Defenses Are Not "Affirmative Defenses"

Hartford HealthCare's Sixth and Seventh Defenses, which allege procompetitive effects under the rule of reason, are not affirmative defenses. Plaintiff fails to cite a single case, antitrust or otherwise, in which a court entertained, much less granted a motion to strike an answer's averments about the procompetitive nature and legitimate business purposes of defendant's conduct. That is not surprising because these are not affirmative defenses in the first place.

In its Motion, Plaintiff instead conflates Hartford HealthCare's potential burden of proving procompetitive effects under the antitrust "rule of reason" with a requirement for pleading affirmative defenses. *See* Mot. at 5-6. Unlike duress, fraud, estoppel, laches, waiver, and other enumerated defenses that a party "must affirmatively state" in an answer, Fed. R. Civ. P. 8(c)(1), however, the assessment of procompetitive effects is an inherent component of the rule of reason analysis. *See Agnew v. Nat'l Collegiate Athletic Ass'n*, 683 F.3d 328, 335-36 (7th Cir. 2012). After all, this inquiry requires "weigh[ing] 'all of the circumstances,'" *Leegin Creative Leather Prod., Inc. v. PSKS, Inc.*, 551 U.S. 877, 885 (2007), to assess "the total economic effects of a

restrictive practice that is plausibly argued to increase competition or other economic values on balance," *In re Sulfuric Acid Antitrust Litig.*, 703 F.3d 1004, 1011 (7th Cir. 2012); *see Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 29 (1984) (stressing that the plaintiff bears the burden of proving that conduct violated the Sherman Act "because it unreasonably restrained competition," and "[t]hat burden necessarily involves an inquiry into the actual effect of the [challenged conduct] on competition").

When evaluating an antitrust claim challenging an acquisition or under the rule of reason, a plaintiff has the initial burden to show anticompetitive effects. Only, if a prima facie antitrust claim is established does, the **burden of production** then shift to the defendant. "[I]f the [defendant] successfully rebuts the *prima facie* case, the burden of production shifts back to the [plaintiff] and merges with the ultimate **burden of persuasion, which is incumbent on the [plaintiff] at all times**." *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179, 199 (S.D.N.Y. 2020) (emphasis added) (alterations in original); *see also Ansul Co. v. Uniroyal, Inc.*, 448 F.2d 872, 883 (2d Cir. 1971) (holding that, in antitrust case involving defendant's assertion of legitimate business reasons for alleged conduct, "[t]he burden of persuasion . . . remains with the plaintiff"); *Chicago Bridge & Iron Co. N.V. v. F.T.C.*, 534 F.3d 410, 423 (5th Cir. 2008) (same). Because there is no question that the burden of persuasion for all of Plaintiff's antitrust claims remains with Plaintiff at all times, Hartford HealthCare's defense of procompetitive effects are, as a matter of law, not affirmative defenses. *See Moore,* 318 F.3d at 566. Accordingly, Plaintiff's assertion that the "the burden of *production*" at some point may shift to Hartford HealthCare to show procompetitive effects for the challenged conduct, Mot. at 6 (emphasis added), misses the point. *See also In re Lidoderm Antitrust Litig.*, 2018 WL 7814761, at *3 (N.D. Cal. Feb. 7, 2018) (stressing that, in an antitrust case, "ultimate burden of *persuasion* remains with plaintiffs")

(emphasis added); Fed. R. Evid. 301 ("In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.").[2]

Hartford HealthCare's burden here is akin to an employer's ability to offer a "legitimate, non-discriminatory reason" in a Title VII case—similarly part of a "burden shifting" framework that need not be pled as an affirmative defense. *Peterson v. Nat'l Sec. Techs., LLC*, 2013 WL 1758857, at *8 (E.D. Wash. Apr. 24, 2013); *see also Thomas v. Exxon Mobil Corp.*, 2009 WL 377334, at *2 (N.D. Ill. Feb. 11, 2009) (holding that "legitimate, non-discriminatory reasons" supporting an employee's termination is not an affirmative defense as that "is nothing more than a mere denial of the allegations in the complaint").

Indeed, in its Sixth and Seventh Defenses, Hartford HealthCare is not "raising new facts and arguments" that would defeat Plaintiff's claims on the assumption that all allegations in the Amended Complaint are in fact true. *See Saks v. Franklin Covey Co.*, 316 F.3d at 350. Rather, Hartford HealthCare is effectively denying allegations already repeatedly cited in Plaintiff's Amended Complaint, including Plaintiff's allegations that Hartford HealthCare's conduct unreasonably restrained trade and was not undertaken to increase quality or efficiency. *See, e.g.*, Dkt. 33 ¶¶ 216, 249-50, 233. Hartford HealthCare's Sixth and Seventh Defenses further specifically deny the Amended Complaint's claims about Hartford HealthCare's purported anticompetitive conduct and lack of procompetitive effects, including the allegations supporting Plaintiff's remaining claims about hiring or acquiring physicians and integrating them with the

[2] Indeed, St. Francis's own authorities confirm that "the ultimate burden of persuasion . . . is incumbent on the [plaintiff] at all times." *See* Mot. at 6 (citing *Fed. Trade Comm'n v. Hackensack Meridian Health, Inc.*, 30 F.4th 160, 166 (3d Cir. 2022); *Fed. Trade Comm'n v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 337 (3d Cir. 2016)).

alleged effect of increasing in-network referrals. *See, e.g., id.* at ¶¶ 5, 8, 85, 185, 187, 194, 216, 244.

B. Hartford HealthCare's Fifth Defense Is a General Denial

Plaintiff fares no better with its effort to strike Hartford HealthCare's Fifth Defense. That defense also is not an affirmative defense but operates as a specific denial of elements inherent in Plaintiff's tortious interference and antitrust claims. As to Plaintiff's tortious interference claim (*see* Dkt. 33 ¶¶ 247-52), the portion of the Fifth Defense stating that Hartford HealthCare took actions "in good faith" and "in pursuit of legitimate business interests" directly denies essential elements for Plaintiff to establish the tort, which requires proof that Hartford HealthCare "engaged in "intentional interference without justification." *Varley v. First Student, Inc.*, 119 A.3d 643, 655-56 (Conn. App. Ct. 2015) (emphasis in original) (explaining that "the central determination of whether a defendant's behavior was improper" is not an "affirmative defense"). Similarly, Hartford HealthCare's assertion that any conduct was taken in pursuit of legitimate business interests represents an express denial of Plaintiff's tortious-interference claim allegations that Hartford HealthCare's "actions were taken without any business justification." Dkt. 33 ¶ 250.

As to Plaintiff's antitrust claims, the Fifth Defense in the Answer serves to directly contradict Plaintiff's allegations that Hartford HealthCare unlawfully monopolized the market, *see id.* ¶ 216, because "monopoly achieved or maintained as a result of . . . legitimate good business practices is not unlawful." *U.S. Football League v. Nat'l Football League*, 842 F.2d 1335, 1361 (2d Cir. 1988); *see also Ansul Co.*, 448 F.2d at 883. And Hartford HealthCare's averments in the Answer that it has acted with a "good faith" purpose and in pursuit of legitimate business interests similarly contradict Plaintiff's allegations of competitive harm under the "rule of reason" analysis, which entails inquiry into both the purpose and nature of Hartford HealthCare's conduct to ascertain whether there has been competitive harm. *See* ABA Antitrust Model Civil Jury

Instructions, Instruction 3B: Rule of Reason—Proof of Competitive Harm, (2016 ed.) ("In determining whether the challenged restraint has produced . . . competitive harm, [one] may look at the following factors: the effect of the restraint on prices, output, product quality, and service; [and] **the purpose and nature of the restraint**[.]") (emphasis added).

II. Even If the Challenged Defenses Are Considered Affirmative Defenses, the Motion Fails

Even if, contrary to law, the three defenses at issue were considered affirmative defenses, Plaintiff has failed to satisfy the "heavy burden" that a Rule 12(f) movant bears. *Luck v. McMahon*, 2021 WL 4248887, at *22. Plaintiff has failed to show that any of the three factors that this Court applies to a motion to strike—*i.e.,* there must be no questions of fact or law that might allow the defense to succeed, and prejudice to the plaintiff—apply to the Challenged Defenses. *See Alfonso*, 2022 WL 4545888, at *2 ("Most courts, including the majority in this District, evaluate motions to strike under [this] three-factor test."). The analysis of these factors, and the resultant "degree of rigor appropriate for testing the pleading of an affirmative defense," is a "context-specific task" that takes into account the "nature of the affirmative defense." *GEOMC*, 918 F.3d at 98; *accord Alfonso*, 2022 WL 4545888, at *2 (citations omitted) (same). A motion to strike "will be denied, unless it can be shown that no evidence in support of the allegation . . . would be admissible." *Luck v. McMahon*, 2021 WL 4248887, at *22.

A. Questions of Fact Clearly Would Allow the Defense to Succeed

Plaintiff cannot demonstrate, and in fact does not even claim, that "there is no question of fact that might allow" the Challenged Defenses "to succeed." *Alfonso*, 2022 WL 4545888, at *2 (citations omitted). Instead, Plaintiff merely argues that the Challenged Defenses are conclusory, Mot. at 6-11, while ignoring Hartford HealthCare's statements in the record and throughout the case about the many procompetitive effects and legitimate business purposes of its alleged conduct

in recruiting and employing physicians and integrating them into Hartford HealthCare's system of coordinated care. These statements refute any notion that there is no fact that might allow the defenses to succeed. *See Alfonso*, 2022 WL 4545888, at *4 (denying motion to strike and noting that the *Twombly* and *Iqbal* standard "applies with less rigor to an affirmative defense"); *Rich*, 2022 WL 7748176, at *3 ("[C]ourts apply a lower plausibility threshold to affirmative defenses." (internal quotations omitted)).[3]

In evaluating the factual sufficiency of an affirmative defense, the Court is not limited to the language pled in the answer itself; instead, the Court may find that the allegations in St. Francis's Amended Complaint support Hartford HealthCare's defenses, or that the parties' briefing on the Motion to Dismiss was sufficient to put St. Francis on notice of the Challenged Defenses. *Luck v. McMahon*, 2021 WL 4248887, at *23 (finding that an affirmative defense was sufficient where the facts underlying that defense "substantially overlap[ped]" with the facts in the complaint); *Rich*, 2022 WL 7748176, at *7 (refusing to strike affirmative defense that is necessarily intertwined with the factual allegations supporting the alleged violation); *Wu v. Sagrista*, 2020 WL 13539901, at *2 (S.D. Fla. June 12, 2020) (finding that an affirmative defense, when combined with the defendants' motion to dismiss, was "more than sufficient to put the Plaintiff on notice and satisfy the pleading requirements of Rule 8" and *Twombly*). Here, the allegations contained in St. Francis's Amended Complaint and Hartford HealthCare's Motion to Dismiss sufficiently support the Challenged Defenses, even assuming they are considered "affirmative defenses."

[3] Moreover, Plaintiff wrongly suggests that a more rigorous plausibility standard should apply to the Challenged Defenses because Plaintiff filed its Amended Complaint over a year ago. *See* Mot. at 10. However, Hartford HealthCare moved to dismiss the entire Amended Complaint and was not required to assume it would lose that motion; in fact, the motion was granted in part. Pursuant to Federal Rule of Civil Procedure 12(a)(4), Hartford HealthCare only had 14 days to respond to the Amended Complaint, which is less than the 21 day period referenced in *GEOMC* that warranted a less rigorous plausibility standard to be applied to affirmative defenses. *See GEOMC*, 918 F.3d at 98.

As noted *supra* at page 3, in its February 23, 2022 Memorandum in Support of Its Motion to Dismiss, Hartford HealthCare described how its actions in recruiting and employing doctors, and then integrating them into Hartford HealthCare's system of clinically-integrated healthcare, were procompetitive for various reasons and pursued for legitimate business purposes. *See, e.g.*, Dkt. 43 at 2, 8-10, 13. Hartford HealthCare described, among other practices, its "innovative integrated-care model marked by strong patient focus, heightened efficiency, and consistent quality," its "treatment of patients in safer and more affordable non-hospital settings," and the "high standard of care" made possible by ensuring "access to common resources including population health-management tools, care coordination staff, electronic medical records, and shared facilities." *Id.* And, in denying the Motion to Dismiss in part, this Court noted that, "[o]f course, HHC can later present evidence that the hiring or acquiring of the physicians at issue is in fact pro-competitive, as a defense against antitrust liability." *Saint Francis*, 2023 WL 1967133, at *16.

The Challenged Defenses also are based on the same actions central to Plaintiff's Amended Complaint—the recruitment and hiring of doctors, integrating them into Hartford HealthCare's system, including by coordinating care through in-system referrals. *See Alfonso*, 2022 WL 4545888, at *4 (finding that, although no particular facts were pled in support of an affirmative defense, it was nonetheless sufficient because it relied on the "exact actions central to Plaintiffs' complaint"); *Rich*, 2022 WL 7748176, at *7 (same); *Luck v. McMahon*, 2021 WL 4248887, at *23 ("substantially overlapping" actions). The Amended Complaint also alleges other facts that are supportive of the defenses at issue. For example, Plaintiff alleges that physicians moved their practices to Hartford HealthCare because Hartford HealthCare offered more attractive employment terms than its competitors, Dkt. 33 ¶ 69, and because Hartford HealthCare was able

to offer positions and other employment terms that physicians wanted, *id.* ¶ 70. Indeed, Plaintiff's allegations specify how Plaintiff believes Hartford HealthCare outcompeted St. Francis on recruiting physicians by allegedly not requiring physicians to pay for the use of electronic health records, or requiring trauma surgeons to work seven days a week. *Id.* ¶¶ 74, 79.

B. Plaintiff Does Not Challenge the Legal Sufficiency of the Sixth and Seventh Challenged Defenses and Is Wrong About the Legal Sufficiency of the Fifth Challenged Defense

Nor does Plaintiff argue that either the Sixth or the Seventh Defense is legally insufficient. For good reason, as it is well-established that a conduct's procompetitive effects and legitimate business purposes are facts that can defeat antitrust and tortious interference claims. *See supra* Section I. Thus, even apart from the other reasons described herein, Plaintiff's Motion should be denied as to the Sixth and Seventh Defenses because the test followed by the Second Circuit requires a movant to show all three factors set out in *GEOMC*. *See, e.g., Town & Country Linen*, 2020 WL 3472597, at *5 ("A party must "show that: (1) there is no question of fact which might allow the defense to succeed; (2) there is no question of law which might allow the defense to succeed; ***and*** (3) the plaintiff would be prejudiced by inclusion of the defense." (emphasis added)).

As to the Fifth Defense, Plaintiff argues that Hartford HealthCare has failed to state a claim because assertions of "good faith" and "legitimate business interests" are irrelevant to an antitrust claim where the "benefit must be to competition in the market . . . to be procompetitive." Mot. at 12. This argument fails for two reasons. First, Plaintiff has pled not only antitrust claims, but also a tortious interference claim. *See* Dkt. 33 ¶¶ 247-52. As described in Section I.B above, Hartford HealthCare's good faith intent and pursuit of legitimate business purposes in relation to some or all of the conduct alleged by Plaintiff are highly relevant to the legal sufficiency of Plaintiff's tortious interference claim. Second, the "nature" and "purpose" of a defendant's conduct are two of the factors a fact-finder may consider in a rule of reason analysis applicable to Plaintiff's

antitrust claims. *See supra* Section I.A; Antitrust Model Civil Jury Instructions, Instruction 3B: Rule of Reason—Proof of Competitive Harm, ABA (2016 ed.) ("In determining whether the challenged restraint has produced . . . competitive harm, [the fact finder] may look at the following factors: . . . the purpose and nature of the restraint[.]").

C. Plaintiff Is Not Prejudiced by the Inclusion of the Challenged Defenses

Finally, Plaintiff fails to demonstrate any prejudice from the inclusion of the Challenged Defenses. A "valid defense should always be allowed if timely filed even if it will prejudice the plaintiff by expanding the scope of the litigation." *GEOMC*, 918 F.3d at 98; *see also Alfonso*, 2022 WL 4545888, at *5; *Haxhe Props., LLC*, 2021 WL 2291101, at *2; *S.E.C. v. Ripple Labs, Inc*., 2022 WL 748150, at *4 (S.D.N.Y. Mar. 11, 2022). There is no dispute in this case that Hartford HealthCare's Answer was timely filed. *See Alfonso*, 2022 WL 4545888, at *5 ("Most importantly, the defense was properly raised in Defendant's timely-filed answer"; finding no prejudice).

Because, as described above, the existence of procompetitive effects and legitimate business goals are inherent disputes in cases like this one, pleading as much is not "necessary 'to avoid surprise and undue prejudice'"—the "critical question . . . in determining whether an issue should be treated as an affirmative defense for purposes of pleading." *In re ZAGG Inc. Shareholder Derivative Action*, 826 F.3d 1222, 1231 (10th Cir. 2016); *see also Curtis v. Timberlake*, 436 F.3d 709, 711 (7th Cir. 2005) (affirmative defense not waived when plaintiff was aware of it from the case's inception). Here, Plaintiff became well aware of the Challenged Defenses almost from the beginning of this case and, indeed, propounded extensive discovery requests about them almost a year ago. *See supra* at page 3-4 & Appendix 1; *see also* Dkt. 59 at 7 (Plaintiff identifying for the Court that discovery would be required on " . . . procompetitive effects of Defendants' practices"). Hartford HealthCare surfaced the existence of procompetitive effects

and legitimate business purposes almost 14 months ago, in its motion to dismiss briefing in February 2022. *See* Dkt. 43 at 2-3, 8-10. Plaintiff's service of document requests shortly thereafter, in April 2022, asking Hartford HealthCare to produce documents relating the effects and benefits of its alleged acquisitions and referral practices, as well as its other alleged conduct, reflect clear evidence that Plaintiff was aware from the beginning that the challenged conduct's procompetitive effects, benefits, nature, and purposes were live issues.[4]

Nor has a single deposition yet to take place in this matter, and the Court recently vacated the current deadlines to begin and conclude non-expert depositions until the parties meet and confer about the completion of document discovery. Dkt. 109. As in *Alfonso*, the activities potentially subject to the defenses in question "are the same activities for which the Plaintiff[] seek[s] [damages], so inclusion of th[e] defense[s] will not expand the scope of the litigation" or require late-stage discovery. *Alfonso*, 2022 WL 4545888, at *5; *Rich*, 2022 WL 7748176, at *7 (denying motion to strike and finding no prejudice where "the facts supporting the defense are necessarily intertwined with the factual allegations supporting the alleged violation" and discovery process was available for parties to develop defense).

In short, there is no credible argument that Plaintiff would suffer prejudice if the Challenged Defenses are not stricken.

III. In the Alternative, the Court Should Grant Leave to Amend Hartford HealthCare's Answer

In the event that the Court determines that the Challenged Defenses are affirmative defenses that were not adequately pled, Hartford HealthCare respectfully seeks leave to amend its

[4] Plaintiff's original 75 document requests and requested search terms are sufficiently broad to discover evidence relating to Hartford HealthCare's defenses. *See, e.g.,* Plaintiff's First Request for Production of Documents to Defendants, attached as Appendix 1 hereto, at Request Nos. 14-15, 21-24, 36-37, 42-43, 47, 49-51, 55, 64-65, 68, 72, 74.

Answer pursuant to Federal Rule of Civil Procedure 15(a)(2). The general rule in the Second Circuit "has been to allow a party to amend its pleadings in the absence of a showing by the nonmovant of prejudice or bad faith." *Chewy, Inc. v. Int'l Bus. Machines Corp.*, 571 F. Supp. 3d 133, 167 (S.D.N.Y. 2021) (quoting *Pasternack v. Shrader*, 863 F.3d 162, 174 (2d Cir. 2017)). Here, St. Francis cannot claim that Hartford HealthCare has acted in bad faith or that St. Francis would be prejudiced, and accordingly leave to amend the Answer should be granted. *See also Blow v. Univ. of Vt. & State Agric. Coll.*, 2021 WL 5903355, at *4 (D. Vt. Oct. 22, 2021) (granting motion to strike defenses in part and allowing the filing of an amended answer).

CONCLUSION

For the foregoing reasons, Plaintiff's Motion to Strike Hartford HealthCare's Fifth, Sixth, and Seventh Defenses should be denied.

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DEFENDANTS,
HARTFORD HEALTHCARE CORPORATION,
HARTFORD HOSPITAL,
HARTFORD HEALTHCARE MEDICAL GROUP, INC., AND
INTEGRATED CARE PARTNERS, LLC

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Appendix 1

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

SAINT FRANCIS HOSPITAL AND MEDICAL CENTER, INC.,

Plaintiff,

v.

HARTFORD HEALTHCARE CORPORATION, HARTFORD HOSPITAL, HARTFORD HEALTHCARE MEDICAL GROUP, INC., INTEGRATED CARE PARTNERS, LLC,

Defendants.

Case No. 22-cv-00050

Judge Alfred Covello

Magistrate Judge Robert Richardson

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANTS

Plaintiff, Saint Francis Hospital and Medical Center, Inc., by its attorneys, Honigman LLP, and Hinckley, Allen & Snyder, pursuant to Fed. R. Civ. P. 34, request that Defendants make available copies of the documents and things described below, including all such documents in the possession, custody or control of its attorneys or such attorneys' employees, within 30 days of the date hereof, at the law offices of Honigman LLP, 660 Woodward Avenue, 2290 First National Building, Detroit, Michigan, 48226 and the law offices of Hinckley, Allen & Snyder LLP, 20 Church Street, Hartford, CT 06103.

The following instructions and definitions shall apply to each of the requests contained below:

DEFINITIONS AND INSTRUCTIONS

As used herein, the following definitions and instructions shall apply:

1. The Documents sought herein must be produced for inspection and copying within thirty (30) calendar days of receipt hereof.

2. Documents sought herein shall include all documents in your possession, custody or control and/or that can be obtained by you from your employees, administrators, officers,

commissioners, officials, agents, representatives, sureties and/or indemnitor. This request shall be deemed continuing and supplemental documents shall be required to be produced immediately if you, directly or indirectly, obtain further or different documents or information from the time documents are first produced to the time of the trial of this matter.

3. These requests require that Defendant produce electronically stored information ("ESI") in accordance with the parties' agreement on the discovery of electronically stored information.

4. Documents attached to each other must not be separated.

5. If any document responsive to a request no longer exists, but you have reason to believe that the document existed at one time, state the circumstances under which the document was lost or destroyed.

6. If any documents are withheld from production based on a claim of privilege, provide for each such document a statement of the claim of privilege and all facts relied on in support thereof, including the document's author(s), addressee(s), date, title, subject matter, all recipient(s) of the original and of any copies, its present location(s), and the requests to which the document is responsive. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. For each document withheld under a claim that it constitutes or contains privileged attorney work product, also state whether You assert that the document was prepared in anticipation of litigation or for trial and, if so, identify that litigation. Submit all non-privileged portions of any responsive document claimed to be privileged.

7. The "Relevant Period" includes January 1, 2016 to present. Unless otherwise stated, these document requests are limited to all documents generated during, or applicable to, the Relevant Period. All such documents should be produced.

8. The term "computer files" means any information, including, without limitation, data and software, stored in or accessible through any computer or other information retrieval system, together with all instructions and other materials necessary to use or interpret such documents, but does not include archived documents, voicemails or text messages.

9. The terms "relate to" or "relating to" mean constitute, consist of, discuss, refer to, reflect on, arise out of, or be in any way or manner, directly or indirectly, in whole or in part, legally, factually, or logically connected with the matter discussed.

10. The singular form of any word shall be deemed to include the plural, and vice versa.

11. The term "including" shall mean "including but not limited to."

12. The terms "and" and "or" shall be construed both conjunctively and disjunctively.

13. The terms "every," "each," "any," or "all" mean each and every.

14. "Reports" include both paper and electronic reports, including without limitation, electronic reports which can be generated by your computer systems or applications.

15. A reference to employment or employees in connection with physicians shall also include physicians subject to professional services agreements and any other affiliations.

16. The "Relevant Area" includes Hartford County. Requests that reference the Relevant Area seek only documents relating in whole or in part to activities in Hartford County.

17. The term "Acquisition" includes (a) the acquisition of assets by, or lease of assets to, Hartford HealthCare from, or joint venture with, a physician practice; (b) a contract to operate

a physician practice; (c) the affiliation or employment by Hartford HealthCare of any physicians or clinical staff formerly or currently affiliated with, or employed b, a physician practice or healthcare facility formerly independent from Hartford HealthCare; and (d) all agreements entered into by Hartford HealthCare concurrently with, or in any way connected to, agreements to acquire, contract with, or otherwise affiliate with any provider. The term "Acquisition" includes not only past or consummated acquisitions but also pending or planned acquisitions, and includes all transactions involving one or more of the elements above.

18. The terms "You", "Your" and "Hartford HealthCare" include, individually and collectively, Hartford HealthCare Corporation, and its and their parents, subsidiaries, affiliates, hospitals, clinics, other health care facilities, physician practice groups (and including Hartford Hospital, Hospital of Central Connecticut, ICP and Hartford HealthCare Medical Group), predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

19. The term "ICP" includes, individually and collectively, Integrated Care Partners, LLC, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity

20. The term "Hartford Hospital" includes, individually and collectively, Hartford Hospital, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice

groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

21. The term "Hospital of Central Connecticut" includes individually and collectively, Hospital of Central Connecticut, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

22. The term "Hartford HealthCare Medical Group" includes, individually and collectively, Hartford HealthCare Medical Group, Inc, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

23. The term "Saint Francis" includes, individually and collectively, Saint Francis Hospital and Medical Center, Inc., and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

24. The term "SoNE" includes, individually and collectively, Southern New England Health Care Organization, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

25. The term "Bristol Hospital" includes, individually and collectively, Bristol Hospital, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

26. The term "Manchester Memorial" includes, individually and collectively, Manchester Memorial Hospital, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

27. The term "UConn John Dempsey Hospital" includes, individually and collectively, University of Connecticut John Dempsey Hospital, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees,

consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

28. The term "Middlesex Cardiology" includes, individually and collectively, Middlesex Cardiology, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

29. The term "Cottage Grove Cardiology" includes, individually and collectively, Cottage Grove Cardiology, and its and their parents, subsidiaries, affiliates, hospitals, clinics, physician practice groups, predecessors and/or successors, if any, and its and their current and/or former representatives and employees; and any person acting on its or their behalf and also includes all officers, directors, employees, consultants, attorneys, authorized agents and/or all other persons acting or purporting to act on behalf of any such entity.

30. If you are unable to respond to a request, you should so state and should:

(a) State why you are unable to respond to a request;

(b) Identify the source, if any, from which responsive information can be obtained; and

(c) Produce as much responsive information as you are able.

31. For all databases or other data compilations submitted in response to this Request for Documents, provide all instructions and documentation, including data dictionaries, reasonably necessary to use or interpret such databases or data compilations.

32. Identify all search terms utilized in connection with review of documents for production pursuant to this request, and all custodians whose documents were searched pursuant to this request. The custodians whose documents are to be searched should include, among others, all individuals identified in Defendants' Initial Disclosures.

33. This Request incorporates by reference all definitions and procedures in the District's Standing Order and in the Stipulation and Proposed Order Regarding Protocol for Discovery in this case.

DOCUMENT REQUESTS

1. All documents relating to any comparison between any rates, charges, reimbursement or margins at (a) Hartford Hospital, Hospital of Central Connecticut or Hartford HealthCare Medical Group physicians and (b) any other hospital or group of hospitals.

ANSWER:

2. All documents relating to the Rand Corporation study concerning hospital rates.

ANSWER:

3. Documents sufficient to show changes in average reimbursement rates paid (both overall and adjusting for case mix) for each managed care plan (by product) with which You contract from 2015 to the present separately by year.

ANSWER:

4. Documents sufficient to show rates paid to Hartford Hospital, Hospital of Central Connecticut or Hartford HealthCare Medical Group physicians by any managed care payor.

ANSWER:

5. All documents relating to any actual or considered termination, departicipation, withdrawal or nonrenewal of a contract with any payors or health plans, or the threat or communication of any such actual or possible actions.

ANSWER:

6. All documents evidencing or relating to Your negotiations with Anthem, Aetna, United, Cigna or ConnectiCare, excluding any documents relating only to billing or billing disputes, including all communications relating to rates.

ANSWER:

7. A complete set of contracts, including all extensions, all attachments to and modifications of such contracts, between each of Hartford Hospital, Hartford HealthCare, Hospital of Central Connecticut, Hartford HealthCare Medical Group, or ICP on the one hand, and Anthem, Aetna, Cigna, United or ConnectiCare on the other hand.

ANSWER:

8. All plans or reports addressing managed care negotiation strategy, relating to, in whole or in part, Your hospitals or other facilities in the Relevant Area.

ANSWER:

9. All documents discussing whether or not Hartford HealthCare facilities or ICP should enter into risk contracts, including without limitation any documents relating to the advantages or disadvantages of risk contracting and any documents involving calculations relating to actual or potential risk contracting.

ANSWER:

10. All documents relating to SoNE.

ANSWER:

11. All documents relating to consideration of entry into bundled pricing arrangements.

ANSWER:

12. All documents relating to the State of Connecticut employees BlueCare Prime Plus POS program, including without limitation all documents relating to consideration of whether to participate in such program and all documents relating to communications to physicians concerning such program.

ANSWER:

13. All documents relating to the State of Connecticut Network of Distinction program, including without limitation all documents relating to consideration of whether to participate in such program and all documents relating to communications to physicians concerning such program.

ANSWER:

14. All documents relating to comparisons and/or differences in quality or in any quality metrics at:

(d) Hartford Hospital or Hospital of Central Connecticut; and

(e) Any other hospital or group of hospitals.

ANSWER:

15. All documents relating to any assessments of the quality or safety of care provided by Your hospitals or physicians in the Relevant Area, including all documents related

to: data or reports submitted by You or received from quality or safety rating organizations; or quality measurements or benchmarking.

ANSWER:

16. All documents relating to Hartford Hospital's Leapfrog safety scores or results.

ANSWER:

17. Annual financial statements (including income statements) for Hartford Hospital, Hospital of Central Connecticut and Hartford HealthCare Medical Group.

ANSWER:

18. All financial analyses with respect to Hartford HealthCare Medical Group, including without limitation analyses of profits or losses or analyses of the contribution to hospital or other facility volumes, profits or revenues by Hartford HealthCare Medical Group or physicians in Hartford HealthCare Medical Group.

ANSWER:

19. All analyses, studies or reports relating to consumer preferences for healthcare facilities or providers in the Relevant Area, including without limitation all patient or customer surveys and focus group studies.

ANSWER:

20. All documents relating to any consultants' analyses, studies or recommendations relating in whole or in part to competition in Hartford County.

ANSWER:

21. All documents relating in whole or in part to competition among hospitals, physicians or physician groups, hospital service lines, networks, health insurance or managed care in the Relevant Area, including all market studies, forecasts, SWOT analyses, consultants' reports, competitive or environmental assessments and surveys, including all documents relating to:

(a) The market shares, strengths or weaknesses, opportunities or threats faced by, or competitive positions of, Hartford Hospital, Hospital of Central Connecticut, ICP, Hartford HealthCare Medical Group, any other Hartford HealthCare facilities, any physicians or physician groups, or any other hospital or any other facility;

(b) The geographic areas in which Your facilities compete, including but not limited to references to service areas, patient origin, or patient flow (based on patient ZIP codes or otherwise); or

(c) The relative strength or weakness of any hospitals, other facilities, physicians or physician groups.

ANSWER:

22. All medical staff plans, and all business plans, strategic plans and marketing plans relating to (in whole or in part) Hartford Hospital, Hospital of Central Connecticut, ICP or Hartford HealthCare Medical Group.

ANSWER:

23. All documents relating to Saint Francis, Bristol Hospital, UConn Dempsey, or Manchester Memorial, including documents relating to patient admissions, membership of physicians on the hospitals' medical staffs, physician referrals, physician alignment or loyalty, or financial condition, strengths or weaknesses.

ANSWER:

24. All business plans, strategic plans and competitive assessments relating to Care Partners of Connecticut, and all documents discussing the possible formation of Care Partners of Connecticut.

ANSWER:

25. All business plans, service line plans and other plans relating in whole or in part to Hartford Hospital, Hospital of Central Connecticut, ICP, Hartford HealthCare Medical Group, cardiology, cardiac surgery, oncology or orthopedics.

ANSWER:

26. All business plans and strategic plans relating to the Bone and Joint Institute.

ANSWER:

27. All documents relating in whole or in part to the possible acquisition of Eastern Connecticut Health Network.

ANSWER:

28. Documents sufficient to show for each of Hartford Hospital and Hospital of Central Connecticut (separately):

(a) For each year, total patient days, patient discharges, inpatient gross revenue and inpatient net revenue;

(b) For each year, outpatient visits, outpatient gross revenue and outpatient net revenue;

(c) The total number of licensed, available and staffed beds on the first day of each year, and the average daily census for each year;

(d) For each year, separately for inpatient and outpatient services, the dollar amount of each hospital's revenues received and the number of inpatients, inpatient days and outpatient treatment episodes, broken out separately by each of the following principal sources of payment: (i) Medicare; (ii) Medicare Advantage; (iii) Medicaid; (iv) other health plan (separately for each); (v) patients (out of pocket); (vi) no source of payment (charity care patients treated for free of charge); (vii) bad debt; and (viii) any other source.

ANSWER:

29. Documents sufficient to show:

(a) Separately for each inpatient admission at each of Hartford Hospital and Hospital of Central Connecticut (separately) during the Relevant Period: admitting, attending and primary care physician, attending and admitting physician specialty, payments, direct costs, contribution margin, date of

admission and discharge, service line descriptions, patient zip code and DRG.

(b) Separately for each outpatient visit at each Hartford HealthCare facility in Hartford County during the Relevant Period, admitting, attending and primary care physician, attending and admitting physician specialty, payment, direct costs, contribution margin, date of admission, service line descriptions, patient zip code and CPT or other procedure codes; and identity of facility.

ANSWER:

30. Documents sufficient to show the number of patients or cases, from January 1, 2019, by physician, which any physician has admitted, referred to, acted as attending physician for, or otherwise treated at, each Hartford HealthCare hospital or other facility in the Relevant Area.

ANSWER:

31. Documents sufficient to identify (separately) all physicians (by name, location and specialty) for each year in the Relevant Period:

(a) Employed by You and practicing (in whole or in part) in the Relevant Area; or

(b) Serving on the active medical staff of (a) Hartford Hospital or (b) Hospital of Central Connecticut

including for each such physician:

(i) The physician's medical specialty, sub-specialty, and board certifications; and

(ii) The physician's professional license number, or any other uniform physician identification number and any professional identification number used for reimbursement.

ANSWER:

32. All documents relating to numbers of physician by specialty, either in total or by employer, practicing in (in whole or in part) the Relevant Area.

ANSWER:

33. Documents sufficient to show ICP's physician roster for each year within the Relevant Period.

ANSWER:

34. All documents discussing the use or proposed use by any health plan (or of health plans generally or hypothetically) of financial incentives to affect choices of providers, including

(a) tiered networks, (b) differentials in copayment, deductibles, or premiums, or (d) other financial payments or penalties.

ANSWER:

35. All documents relating to Your policies, procedures or practices concerning the referral of patients for hospitalization or for inpatient or outpatient treatment, including all documents relating to policies, instructions, guidance, reports, recommendations, questions, incentives or suggestions with respect to referrals; all communications to particular physicians relating to referrals; all documents relating to physician admission or referral patterns; and all tabulations, calculations, summaries, discussions and analyses of referrals, but excluding any documents relating only to individual patient referrals.

ANSWER:

36. All documents relating to methods or measures of physician compensation, including criteria for payment and all documents setting forth communications to physicians relating to criteria for payment.

ANSWER:

37. All documents relating to use of the EPIC system to monitor physician referrals or any other aspect of physician behavior or performance.

ANSWER:

38. Documents sufficient to show the fields, ordering instructions and menus for any electronic ordering systems to the extent applicable to referrals for specialty physicians or for particular facilities or services, whether contained in an electronic medical records system or elsewhere.

ANSWER:

39. With respect to each of Drs. Peter Byeff, Brian Byrne, Jason Chang, David Hosmer, Joseph Sinning, Joerg Rathmann, Particia DeFusco, Aneesh Tolat, Sabeena Arora, Joseph Ingrassia, David Casey, Muzibul Chowdhury, Marko Lujic, Vladimir Daoud, Kimberly A. Caprio, Bret M. Schipper, Niamey Wilson, Maame Dankwah-Quansah, Barry J. Gordon, Arzu Demirci, Saira Rani, Patricia Lampugnale, Ulysses Wu, Paul Anthony, Ramkumar Sankaran, Martin Keibel, Jesse Eisler, Michael Aron, Steven Selden, Shishir Mathur, Patrick Senatus, Darshan Shah, Gayethri Narayanswamy or Narinder Maheshwari, the physicians in Middlesex Cardiology or the physicians currently or previously practicing at Cottage Grove Cardiology, and/or their physician practices, documents sufficient to show admissions at or referrals to any Hartford HealthCare facility by each such physician or physician group for each year from 2016 to present.

ANSWER:

40. All documents relating to policies, procedures or practices concerning trauma case referrals to any hospital.

ANSWER:

41. All documents relating to the effect on physician referrals, referrals to any of Your hospitals or other facilities, or admissions at any of Your hospitals or other facilities of:

(a) Any actual or proposed Acquisition in the Relevant Area; or

(b) Any actual or contemplated plan, strategy, practice or course of action with regard to physician Acquisitions.

ANSWER:

42. All documents relating to ICP's referral policy or network engagement strategy.

ANSWER:

43. All documents relating to or constituting physician scores, score cards, report cards, reports, or incentives for physicians belonging to ICP.

ANSWER:

44. All documents relating to including or not including particular physicians or physician groups as eligible for reimbursement for on-call services, excluding documents relating only to payments to specific physicians for such services.

ANSWER:

45. All documents relating to including or not including particular physicians or physician groups as eligible for reimbursement for nuclear medicine test review, excluding documents relating only to payments to specific physicians for such services.

ANSWER:

46. All documents relating to including or not including particular physicians or physician groups as eligible for reimbursement for echocardiogram review, excluding documents relating only to payments to specific physicians for such services.

ANSWER:

47. All presentations, agendas, minutes of meetings, summaries, and hand-outs relating to or presented to any management committee, executive committee, board of directors or trustees, other governance committee or any group or committee with similar responsibilities including responsibility for physician-hospital relationships, physician recruitment, strategic or

business planning, or for reviewing contracts with health insurers or reimbursement or fee schedules.

ANSWER:

48. All projections, pro formas, forecasts, business plans, calculations of hospital or physician cases, revenues or profitability or calculations of value or fair market value, relating to Cottage Grove Cardiology, Middlesex Cardiology or any of Drs. Peter Byeff, Brian Byrne, Jason Chang, David Hosmer, Joseph Sinning, Joerg Rathmann, Particia DeFusco, Aneesh Tolat, Sabeena Arora, Joseph Ingrassia, David Casey, Muzibul Chowdhury, Marko Lujic, Vladimir Daoud, Kimberly A. Caprio, Bret M. Schipper, Niamey Wilson, Maame Dankwah-Quansah, Barry J. Gordon, Arzu Demirci, Saira Rani, Patricia Lampugnale, Ulysses Wu, Paul Anthony, Ramkumar Sankaran, Martin Keibel, Jesse Eisler, Michael Aron, Steven Selden, Shishir Mathur, Patrick Senatus, Darshan Shah, Gayethri Narayanswamy or Narinder Maheshwari and/or their physician practices.

ANSWER:

49. All documents relating to any actual or potential effects on competition, competitors, revenues, return on investment, market share, hospital volumes, service line volumes, admissions or discharges, reimbursement rates or managed care relationships of:

(a) Any actual or proposed Acquisition in the Relevant Area;

(b) Any group or series of Acquisitions;

(c) Any actual or contemplated plan, strategy, practice or course of action with regard to physician Acquisitions or employment of physicians;

(d) Any policies, practices or procedures with regard to referrals;

(e) Marketing, community outreach, sponsorship, advertising or communications efforts, either collectively or individually;

(f) Construction of additional facilities or expansion of facilities;

(g) Employment of physicians who had not previously been in private practice in Hartford County;

(h) Establishment of the Bone & Joint Institute; or

(i) Purchases of ambulatory surgery centers.

ANSWER:

50. Documents (except documents solely relating to environmental, tax, human resources, OSHA or ERISA issues) sufficient to identify any prior, pending, or potential Acquisition, or any Acquisition that was considered, evaluated or discussed by Defendants, including, for each such Acquisition:

(a) Documents sufficient to show any transactions, agreements or understandings, between Hartford HealthCare and the other party to any such transaction (e.g. seller, lessor, or other contracting party) that were entered into or negotiated concurrent with or in connection with such transaction, including without limitation all contracts or agreements, non-competition provisions, agreements regarding consideration for assets or

goodwill, side-letters, and any other documents reflecting any understandings and any letters with specific individuals; and

(b) All documents relating to the value, benefits, costs, advantages or disadvantages of any such transaction.

ANSWER:

51. For each Acquisition, documents sufficient to describe in detail:

(a) The assets acquired, including any valuation of those assets, and business structure of the acquired firm (e.g. corporation, partnership);

(b) The identity of each physician and mid-level provider who affiliated with or was employed by Hartford HealthCare as a result of or in connection with the Acquisitions; and

(c) Any documents relating to any actual or projected effects of any such Acquisition on patient volumes, admissions, competition, competitors, revenues, or on any other hospital, including Saint Francis.

ANSWER:

52. All documents relating to consideration of the Acquisition of Middlesex Cardiology or Cottage Grove Cardiology.

ANSWER:

53. With respect to each Acquisition, produce documents sufficient to identify:

(a) Non-physician staff working for the physician's prior practice who were hired by You.

(b) Any interests in buildings relating to the physician's prior practice which were acquired by You.

(c) Any equipment relating to the physician's prior practice which was acquired by You.

(d) Any furnishings or fixtures relating to the physician's prior practice which were acquired by You.

(e) Any patient lists and patient records relating to the physician's prior practice which were transferred to You.

(f) Any billing and payment records relating to the physician's prior practice which were transferred to You.

(g) Any accounts receivable relating to the physician's prior practice which were acquired by You.

(h) Any accounts payable relating to the physician's prior practice which were assumed by You.

ANSWER:

54. All documents referring to or discussing costs or difficulties (including length of time required) in connection with recruiting of physicians.

ANSWER:

55. All documents that discuss or reference Your reasons and/or strategies for employing physicians that were already practicing in the Relevant Area rather than recruiting new physicians from outside of the Relevant Area to practice in the Relevant Area.

ANSWER:

56. All documents related to actual or possible physician targets for acquisition, employment or affiliation within the Relevant Area.

ANSWER:

57. All documents referring to antitrust concerns or the antitrust laws as applicable to any actual or possible Acquisitions.

ANSWER:

58. Documents sufficient to show the identity of each physician from Middlesex Cardiology Group or Cottage Grove Cardiology Group who joined Hartford HealthCare Medical Group.

ANSWER:

59. All documents relating to decisions concerning the geographic placement of physician clinics.

ANSWER:

60. All contract templates, standard contracts or forms of contract between ICP and physician members or between Hartford HealthCare Medical Group and employed physicians.

ANSWER:

61. Produce complete organizational charts for each of the Defendants, including organizational charts sufficient to show leadership at each of Hartford Hospital and Hospital of Central Connecticut at the service line level, as well as at the Vice President and Director level for all Defendants.

ANSWER:

62. Documents sufficient to show all physician medical director positions or similar positions at Hartford Hospital or Hospital of Central Connecticut that existed at any time during the Relevant Period, including without limitation, for each such position, title, duties,

responsibilities, activities undertaken, compensation, and the identity of any physicians who serve or have served in any such positions.

ANSWER:

63. All documents relating to the creation of medical director or similar positions, the determination of compensation for such positions, of the offering of such positions to particular physicians.

ANSWER:

64. All documents relating to Your policies, procedures or practices concerning whether to perform orthopedic procedures on an inpatient or outpatient basis.

ANSWER:

65. All documents relating to Your purchase of the Mako robot, including all documents relating to exclusivity or the unavailability of the Mako robot to other hospitals and all documents relating to the benefits from such exclusivity.

ANSWER:

66. All documents relating to marketing or advertising involving the Mako robot.

ANSWER:

67. All pro formas, projections and forecasts relating to the purchase and/or use of the Mako robot.

ANSWER:

68. All documents discussing the Mako robot and its relationship to physician recruitment, retention or the acquisition of physician practices.

ANSWER:

69. All documents relating to the investigation of Hartford HealthCare by the Antitrust Division of the Department of Justice, including without limitation all documents produced to the Department of Justice.

ANSWER:

70. All documents relating to or referring to communications with Starling Medical Group.

ANSWER:

71. All forecasts, projections and budgets relating to (in whole or in part) Hartford Hospital, Hospital of Central Connecticut, or Hartford HealthCare Medical Group.

ANSWER:

72. All marketing plans relating to (in whole or in part) Hartford Hospital, Hospital of Central Connecticut, Hartford HealthCare Medical Group, or facilities in Hartford County.

ANSWER:

73. All analyses of fair market value in connection with the potential employment of physicians or purchase of physician practices.

ANSWER:

74. All documents discussing Your procedures or policies relating to integration of physicians.

ANSWER:

Date: April 25, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 25, 2022, the foregoing was electronically served to all counsel of record.

By: s/David A. Ettinger
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