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STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF CHARLESTON	)	
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA,	)	Civil Action No. _____
Plaintiffs,	)	
v.	)	**MOTION FOR TEMPORARY INJUNCTION**
HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA,	)	
Defendants.	)	

The Plaintiffs Medical University of South Carolina ("MUSC") and University Medical Associates of the Medical University of South Carolina ("UMA") (collectively "Plaintiffs") respectfully submit their Motion for Temporary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure against HCA Healthcare, Inc. ("HCA"), Trident Medical Center, LLC ("Trident"), Terry A. Day ("Day"), Betsy Kay Davis ("Davis"), Joshua D. Hornig ("Hornig"), Eric J. Lentsch ("Lentsch"), David M. Neskey ("Neskey") and Anand K. Sharma ("Sharma") (collectively as "Defendants"). Importantly, MUSC requests a hearing on this Motion for Preliminary Injunction **on or before December 1, 2021**, as Defendant physicians will no longer be employed by MUSC as of this date, and the risk of harm to MUSC exponentially increases with their departure and transition to competitor Defendants Trident and HCA.

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The individual Defendants have been employed at MUSC in the Department of Otolaryngology, Head and Neck Oncology Division of MUSC ("HNO") and have served as members of the UMA for a significant number of years. Beginning in July and August, 2021, the individual Defendants began submitting their resignations *en masse*, and it became known that they were transitioning to MUSC's competitors, Defendants Trident and HCA. The individual Defendants thereafter began obtaining Plaintiffs' confidential and proprietary information to take and utilize during their employment with Defendants Trident and HCA. In addition, Defendant Neskey, Program Director of the Head and Neck Fellowship, began to attempt to take MUSC's current Fellows with him to Defendants Trident and HCA and sabotage MUSC's HNO Fellowship Training Program. Lastly, in violation of their duties of loyalty as employees of MUSC, Defendants have recruited and solicited numerous employees from MUSC and UMA to work for Defendants Trident and HCA. The individual Defendants have committed these unlawful acts during their employment with Plaintiff MUSC and as members of UMA. Plaintiffs incorporate by reference all of the allegations in the Complaint filed herein and all facts as asserted in the affidavits attached to this motion.

INTRODUCTION

MUSC's Otolaryngology Department, which includes the HNO Division, is a prestigious Integrated Center of Clinical Excellence ("ICCE").[1] MUSC has expended millions of dollars of resources over the last two decades to build its HNO Division.[2] Along the way, MUSC created detailed and proprietary methods for complex patient procedures, which have been taken by the individual Defendants and given to Trident and HCA. In the time period leading up to their

[1] Integrated Centers of Clinical Excellence are organizational units of MUSC.

[2] (See Affidavit of Patrick J. Crawley).

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departure from MUSC, the individual Defendants have gathered MUSC's confidential and proprietary information (procedure lists, procedure preference cards, instrument lists, and billing and revenue information) and provided it to Trident and HCA for the purpose of using it when they begin their employment at Trident and HCA, in direct competition with Plaintiffs.

All unlawful actions by the individual Defendants have been engaged in during their employment with MUSC and while members of the UMA. In addition to taking Plaintiffs' confidential and proprietary information, the individual Defendants (while employed by MUSC), and in conjunction with Defendants Trident and HCA, have recruited and solicited numerous HNO Division employees to join them in their transition to HCA and Trident. Defendants Neskey and Day are even attempting to sabotage MUSC's accredited Head and Neck Fellowship Program by unauthorized communications with the accrediting body and solicitation of the current fellows.

Temporary injunctive relief is critical to preserve Plaintiffs' confidential and proprietary property before the individual Defendants transition their employment to MUSC's competitors, Defendants Trident and HCA, and before the Defendants use it to compete with MUSC. To the extent that the individual Defendants have already provided Plaintiffs' confidential and proprietary property to Defendants Trident and HCA, the return of such property is imperative while this Court decides the merits of Plaintiffs' causes of action, and Defendants must be enjoined from further attempts to interfere with MUSC's HNO Fellowship Program.

STANDARD FOR TEMPORARY INJUNCTION

"The purpose of a preliminary injunction is to preserve the status quo and prevent irreparable harm to the party requesting it." *Compton v. S.C. Dept. of Corrections*, 392 S.C. 361, 366; 709 S.E.2d 639, 642 (2011). The moving party must allege sufficient facts to demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation. *Id.*

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Plaintiffs must establish that (1) they will suffer immediate, irreparable harm without the injunction; (2) they have a likelihood of success on the merits; and (3) they have no adequate remedy at law. *Id.* In evaluating whether Plaintiffs are entitled to a preliminary injunction, the court "must examine the merits of the underlying case only to the extent necessary to determine whether [Plaintiffs have] made a sufficient prima facie showing of entitlement to relief." *Id.* at 367, 709 S.E.2d at 642. Whether to grant a preliminary injunction is within the sound discretion of the trial court, and will be upheld unless clearly erroneous. *Id*. at 366, 709 S.E.2d at 642.

PLAINTIFFS ARE ENTITLED TO A TEMPORARY INJUNCTION.

I. Plaintiffs are likely to succeed on the merits.

This element of the preliminary injunction test does not require a litigant to "prove an absolute right"; rather, it **"need only present 'a fair question to raise as to the existence of such a right."** *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 456, 626 S.E.2d 34, 37 (Ct. App. 2005) (emphasis added) (quoting *Williams v. Jones*, 92 S.C. 342, 347, 75 S.E. 705, 710 (1912)), holding modified on other grounds by *Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 694 S.E.2d 15 (2010). As long as a litigant can make a "*prima facie* showing," the injunction should be issued. *Id.*

A. Plaintiffs are likely to succeed in their action regarding Defendants' misappropriation of trade secrets.

As set forth in the Complaint and as shown by the supporting affidavits of Dr. Patrick Cawley, Dean Raymond DuBois and Timothy Brendle, Defendants have taken highly confidential, proprietary information that is of great value to Plaintiffs and which constitutes trade secrets within the meaning of the South Carolina Trade Secrets Act. As further set forth in the Complaint and as shown by the supporting affidavits, the misappropriation of these trade secrets is causing and will continue to cause irreparable harm to Plaintiffs that money cannot fix.

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B. MUSC is likely to succeed in its action regarding the unlawful interference with its Head and Neck Fellowship Program.

MUSC's Head and Neck Fellowship Program is one of less than fifty programs throughout the country accredited by the American Head and Neck Society ("AHNS"). The accreditation of MUSC's Head and Neck Fellowship program was accomplished by MUSC through years of preparation and significant financial investment. Defendants HCA and Trident do not have an AHNS-accredited fellowship program. [3]

As set forth in the Complaint and as shown by the supporting affidavits of Dr. Cawley and Dean DuBois, Defendant Neskey, Director of the Head & Neck Oncology Fellowship Program, has taken various actions to interfere with and damage MUSC's Fellowship Program, including engaging in unauthorized communications with ANHS, the accrediting body for the fellowship program.

C. Plaintiffs are likely to succeed in their action regarding the solicitation of their employees.

As stated previously, Defendant physicians (while employed by MUSC) and together with HCA, have recruited and solicited numerous HNO Division employees away from MUSC and UMA to work for Defendants Trident and HCA. These actions by the individual Defendants were clearly committed during their employment with MUSC and while members of the UMA and constitute a breach of the duty of loyalty they owed to MUSC and UMA. *See Berry v. Goodyear Tire & Rubber*, 270 S.C. 489, 242 S.E.2d 551 (1978). *See also Sonoco Prods. Co. v. Güven*, No. 4:12-CV-00790-BHH, 2015 WL 127990, at *1 (D.S.C. Jan. 8, 2015) (unreported) (finding that an employee's solicitation of its employers' employees in forming competitor business could constitute a breach of loyalty to employer).

[3] *See* Affidavit of Patrick J. Crawley and Affidavit of Raymond N. DuBois.

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II. Plaintiffs will face permanent and irreparable harm without issuance of an injunction.

The individual Defendants are in possession of MUSC's confidential, proprietary information. Plaintiffs' confidential and proprietary information has been misappropriated by Defendants and should be immediately returned, together with any and all copies, pictures, photographs, mock-ups, and any other memorialization of the information by any and all means. In addition, MUSC's Head and Neck Fellowship Program faces potential irreparable harm without issuance of this requested injunctive relief.

III. Plaintiffs have no adequate remedy at law and the equities favor the granting of temporary injunctive relief.

Plaintiffs have no adequate remedy at law. The only way to safeguard Plaintiffs' rights to their confidential and proprietary information during this litigation is to grant preliminary injunctive relief requiring Defendants to return the information and to cease utilization of the information. In addition, a balance of the benefit in granting the injunction against the potential inconvenience and damage to the Defendants certainly weighs in favor of Plaintiffs. MUSC and UMA's employees, their trade secrets, and MUSC's Head and Neck Fellowship Program are being taken by Defendants Trident and HCA as HCA is attempting to build its own Head and Neck program using Plaintiffs' confidential and proprietary information.

Moreover and most importantly, the public interest weighs heavily in favor of granting the injunction. MUSC is a public academic health system, as well as an educational and research institution, whose mission is education, research and clinical care to preserve and optimize human life in South Carolina and beyond. UMA is MUSC's faculty practice plan, which is a non-profit 501(c)(3), organized exclusively for charitable purposes. In contrast, Defendant Trident is a private, for-profit healthcare facility and HCA is a publicly traded for-profit corporation, with obligations to generate profits for its shareholders. Accordingly, the balance of equities tips in

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favor of granting the temporary injunction to protect Plaintiffs' proprietary and confidential information from being taken by their for-profit competitors, Defendants Trident and HCA during this litigation.

In summary, Plaintiffs seek preliminary injunctive relief in accordance with the South Carolina Trade Secrets Act, and the common law of South Carolina and request this Court to execute an Order which:

(1) prohibits Defendants from further utilizing Plaintiffs' confidential and proprietary information, including instrument lists, patient lists, physician preference cards and financial data;

(2) requires the return of all confidential and proprietary information taken, including, but not limited to instrument lists, patient lists, physician preference cards, and financial data;

(3) prohibits Defendants from billing or collecting money for services performed utilizing any of Plaintiffs' confidential and proprietary information, including instrument lists, patient lists, physician preference cards, and financial data;

(4) prohibits Defendants from further interfering with MUSC's Fellowship Program in any way or recruiting any MUSC Fellow;

(5) prohibits Defendants from contacting any fellowship accreditation bodies regarding MUSC; and

(6) prohibits Defendants from further recruiting or soliciting, or otherwise contacting current MUSC and UMA employees, associates, agents, and fellows regarding any potential employment with HCA.

CONCLUSION

For the above reasons, as well as those set forth in the supporting affidavits, any memoranda later submitted, and such further evidence and argument presented at any hearing, the Court should enter a temporary injunction to provide Plaintiffs with the foregoing relief.

Respectfully submitted,

BURR & FORMAN LLP

By: s/*Celeste T. Jones*

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, v. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA, Defendants.	)	Civil Action No. _____ AFFIDAVIT OF. TIMOTHY BRENDLE

I, Timothy Brendle, first being duly sworn deposes and says:

1. I am the Chief Perioperative Operations Officer at MUSC Health, Charleston Division.

2. I earned a Bachelor of Science in Nursing, M.S. in Leadership and a Doctor of Nursing Practice or DNP in Nursing Administration from Regis University. I first obtained my license as a Registered Nurse in South Carolina in 1995. I hold the following certificates and licenses: Certified Nurse Operating Room or CNOR from the Competency & Credentialing Institute and Nurse Executive Certification or NE-BC from the American Nurses Credentialing Center.

3. I have worked at MUSC for approximately twenty-one (21) years. I oversee the Operating Room ("OR") operations for over 50 ORs and hybrid OR suites in all of MUSC Health's

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Charleston facilities. The procedures performed in the ORs include a broad range of highly specialized procedures with specific, tailored OR needs for each specialty and subspecialty procedure, including the Head & Neck Oncology procedures performed by the individual defendants.

4. While working for MUSC in the year 2000, I served as the ear, nose, and throat ("ENT") OR Coordinator, which oversaw all ENT procedures performed in the ORs, including Head and Neck Oncology procedures. At that time, I frequently oversaw day-to-day operations within the ENT service line, which included procedures performed by defendant Day. At that time, defendant Day and others on the Head and Neck team began developing the processes, procedures, and staffing requirements needed for the complex, multi-phase cancer removal and free-flap procedures performed by the defendants that often last up to ten (10) to fifteen (15) hours. These highly complex procedures involve multiple teams and specialized equipment. Over the past several years, MUSC's Department of Otolaryngology in the Division of Head and Neck Oncology ("HNO Division") surgeons performed approximately three (3) to four (4) of these long, complex cases per week. This is an increase from what the Head and Neck team could perform when I began working for MUSC in the year 2000. At that time, the Head and Neck surgeons performed approximately one (1) to two (2) cases per week.

5. As new physicians were added to the multidisciplinary team developed to treat Head and Neck cancer patients, surgical "physician preference" cards were developed that specify each surgeon's preferences with respect to types and brands of instruments, supplies, and pharmaceuticals as well as processes to follow for each specialized type of procedure. The cards and equipment lists for the procedures are highly detailed and technical and have been perfected and assembled over decades of development at MUSC. Defendants Day, Hornig, Lentsch, and

Neskey collectively have developed over 100 preference cards over the years for a broad range of specialized procedures.

6. Access to the procedure cards and instrument lists are restricted access for only certain MUSC employees and they are not accessible by the public.

7. I estimate it would take Trident Medical Center eight (8) to ten (10) years to independently grow the high-quality, multi-disciplinary Head and Neck surgical practice that MUSC has developed to date, and that is assuming that Trident devotes the same level of resources that MUSC has furnished to defendant physicians and their practice over the years.

8. I have reviewed the equipment list in Trident Medical Center's Certificate of Need ("CON") Application, filed on August 30, 2021 and identified in **Exhibit #4**. The items listed in the CON Application are not adequate to perform the procedures performed by the Head and Neck team at MUSC, or to train and educate residents, fellows, surgical nurses and surgical techs.

FURTHER AFFIANT SAYETH NOT.

Timothy Brendle

SWORN TO AND SUBSCRIBED before me this 19th day of November, 2021.

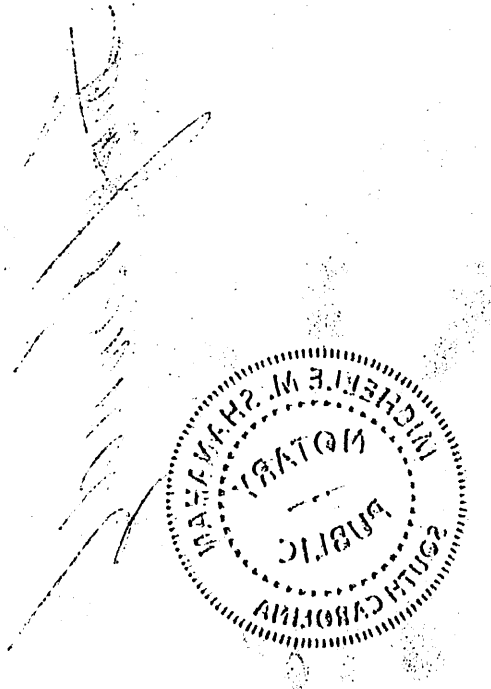
Michelle M Shanahan
Notary Public for S.C.

Michelle M Shanahan
Print Name

My Commission Expires: 6/10/2026

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I, Raymond N. DuBois, MD, PhD being duly sworn deposes and says:

I. Background about Dr. DuBois

1. I am of sound mind and body, over the age of eighteen (18), and competent to offer testimony.

2. I offer this affidavit based upon my personal knowledge, based upon information and records maintained by the Medical University of South Carolina ("MUSC"), and based upon information and records maintained in the Dean's office.

3. I currently hold the positions of Dean of the College of Medicine at MUSC and Director of the MUSC Hollings Cancer Center.

4. I became Dean of the College of Medicine at MUSC in March 2016, and I became the Director of the MUSC Hollings Cancer Center in 2020. I have worked in academic medicine for

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over thirty-five (35) years and have faculty and leadership positions at multiple institutions, including the University of Texas MD Anderson Cancer Center, the Mayo Clinic, Vanderbilt University Medical Center, and the American Association for Cancer Research.

5. As Dean, I serve as the Chief Academic Officer for the College of Medicine at MUSC, and I perform the roles and responsibilities set forth in the position description, which is attached hereto as **Exhibit #1**.

6. As the Director of the MUSC Hollings Cancer Center, I am generally responsible for the overall administration related to the basic, population, and clinical research activities within the Hollings Cancer Center and the cancer service line for the Hollings Cancer Center in conjunction with the College of Medicine and MUSC Health. A more thorough description of my job duties as Director of the MUSC Hollings Cancer Center is attached hereto as **Exhibit #2**.

7. I am a Member of the University Medical Associates ("UMA"), the Faculty Practice Plan of MUSC, and I serve on UMA's Board of Directors and its Executive Committee. The UMA is a South Carolina not-for-profit corporation pursuant to Title 33 Chapter 11 of the South Carolina Code of Laws.

II. MUSC's Head & Neck Oncology Division

8. MUSC has provided specialty care in Otolaryngology (colloquially known as "ear, nose, and throat") to South Carolina citizens for over a century. Over the past twenty (20) years, the Department of Otolaryngology has maintained national recognition, including ranking in the top ten (10) departments in its specialty in National Institute of Health ("NIH") research funding, offering a top ten (10) residency program, and achieving U.S. News and World Report rankings in the top fifteen (15) ear, nose, and throat services in the country. The Department's faculty

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conduct education, research, and clinical services in nine (9) different subspecialties, including Head and Neck Oncology.

9. MUSC's Department of Otolaryngology in the Division of Head and Neck Oncology ("HNO Division") is one of the largest programs in the country devoted to the care of the head and neck cancer patient. It was developed and has continuously evolved since the current Department Chair, Paul Lambert, M.D., and defendant physician Day arrived at MUSC in 1999. In 2015, MUSC opened the Wendy and Keith Wellin Head and Neck Oncology Center after receiving a generous donation from the Wellin family. The Center is a partner with MUSC Hollings Cancer Center ("the Center"), the only NCI-designated cancer center in South Carolina, and the Department contributed $500,000 to the capital needed to establish a state-of-the-art center.

10. At the Center, a comprehensive multi-disciplinary team comprised of surgeons, radiation oncologists, medical oncologists, maxillofacial prosthodontists, speech and swallowing specialists, nutritionists, and social workers have provided point-of-service, coordinated care from an initial patient encounter through treatment and survivorship. Overall, 750 to 800 new patients with head and neck cancer are evaluated at MUSC annually.

11. Prior to their effective resignation dates, each of the defendant physicians in this action were long-term faculty members and medical care providers, working in MUSC's HNO Division. In addition, each of the defendant physicians in this action were, at all relevant times, Members of the UMA.

12. Defendant Davis joined the Department of Otolaryngology in 1995. After completing his own fellowship at MUSC in 2005, Defendant Hornig joined the Division. Defendant Lentsch joined the Division in 2006. Defendant Neskey joined the Division in 2014. Defendant Sharma joined the Department of Radiation Oncology in 2001, and has held a faculty appointment in the

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Department of Otolaryngology since 2003. Over time, MUSC developed and nurtured a comprehensive team of clinicians to furnish the highest levels of care to the hundreds of patients MUSC treats annually. The complete list of the team members providing this treatment to patients on behalf of MUSC is attached hereto as **Exhibit #3.**

13. With certain exceptions,[1] the individuals reflected in **Exhibit #3** are current employees of MUSC as of the date of this affidavit. Effective December 1, 2021, the defendant physicians will no longer be a part of this team, as they have resigned from MUSC, and they will, upon information and belief, work for Trident Medical Center in North Charleston, which is operated by defendant HCA Healthcare, Inc. ("HCA").

14. Unlike MUSC, which is a public academic health system with a tri-partite mission of education, research, and providing clinical excellence to all citizens of South Carolina and beyond, Trident Medical Center is a private for-profit healthcare facility and its parent company, HCA, is a publicly-traded corporation obligated to earn profits for its shareholders.

15. Historically, Trident Medical Center has not performed the complex type of head and neck procedures at its North Charleston location that MUSC's HNO Division performs. The types of medical procedures performed by MUSC's HNO Division are long, multi-phase and complicated procedures, often lasting up to ten (10) to fifteen (15) hours.

16. Upon information and belief, Trident Medical Center does not have the facilities, equipment, manpower, and know-how to provide patients with the level of care that MUSC's HNO Division provides. Notably, simultaneously with the defendant physicians' resignations from MUSC, Trident Medical Center filed a Certificate of Need Application, attached hereto as **Exhibit**

[1] Sara Jasper, Caitlin Mengler, Kiely St. Germain, and Hannah Feltner all resigned and left MUSC during October 2021 and, upon information and belief, are or will be working at Trident Medical Center in North Charleston for HCA.

#4, to expand its facility in an attempt to achieve the capability to perform the complex type of head and neck procedures at its North Charleston location. In addition, even if Trident's facilities are currently sufficient to support a ten (10) to fifteen (15) hour surgery, but for defendant HCA's wholesale poaching of MUSC's HNO Division's valuable resources and know-how, Trident would be incapable of providing any quality head and neck oncology surgical services for many years.

17. MUSC built its HNO Division over two decades and developed the processes to perform these operations over the course of the last two decades. MUSC did so not with an eye not towards maximizing revenue, but with the goal of fulfilling its institutional and statutory mission, which is to preserve and optimize human life in South Carolina and beyond through education, research and patient care.

III. MUSC's Confidential & Proprietary Information

18. During the last two decades, when MUSC has been building its HNO Division, it has identified and purchased the equipment necessary to perform these procedures, identified the team members necessary to perform these procedures, and developed physician preference cards and instrument lists to perform these procedures.

19. MUSC's physician preference cards are catalogues of specific tools, supplies, and room setup that a surgeon prefers for a particular type of surgery. MUSC's physician preference cards are confidential and proprietary information belonging to MUSC, not to any individual employee.

20. MUSC's instrument lists identify the instruments specific surgeons need to perform certain procedures. MUSC's instrument lists are confidential and proprietary information belonging to MUSC, not to any individual employee.

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21. MUSC's physician preference cards and instrument lists enable the team members to perform the complicated head and neck procedures MUSC's HNO Division has historically performed.

22. MUSC's physician preference cards and instrument lists are not disclosed to the public and are not available in the public domain.

23. MUSC maintains policies and procedures to protect its confidential and proprietary information from disclosure to unauthorized recipients. In addition, MUSC limits access to its confidential and proprietary information. MUSC only allows those persons to access such information who have a legitimate need to do so. To the extent one attempts to access such information remotely, MUSC uses a two-factor authentication system.

24. An example of the confidentiality obligations imposed on MUSC's employees can be found in the Code of Conduct, which is part of the MUSC Faculty Handbook. The Code of Conduct expressly states that "[n]o employee shall disclose confidential information or use such information for his or her personal benefit." **Exhibit #5**.

25. While still employed by MUSC but after notifying MUSC of their intent to resign, upon information and belief, defendant physicians Day, Hornig, Lentsch, and Neskey directed a registered nurse employed by MUSC, Jamie Wilsgard, to send physician preference cards from MUSC to HCA. The email correspondence where Ms. Wilsgard transmitted these physician cards to HCA is identified as **Exhibit #6**[2].

[2] By its very nature, the part of Exhibit #6 that contains the physician preference cards is highly confidential and will be provided to the court on a confidential basis. It will not be part of the public record.

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26. Defendant physicians Day, Hornig, Lentsch, and Neskey did not have the authority to transmit MUSC's physician preference cards to HCA, and by doing so, defendant physicians Day, Hornig, Lentsch, and Neskey violated MUSC's policies and procedures.

27. While still employed by MUSC but after notifying MUSC of his intent to resign, defendant physician Hornig obtained MUSC's instrument list and sent this information to HCA. Defendant Hornig's transmission of this information to HCA is reflected in **Exhibit #7**.[3]

28. Upon information and belief, Trident Medical Center never had the physician preference cards and instrument lists necessary to enable defendant physicians (or other physicians) to quickly develop a facility, processes, and procedures to efficiently perform the type of head and neck procedures that have been historically performed by and at MUSC.

29. Without the physician preference cards and instrument lists, the defendant physicians would not be able to quickly establish the facilities, processes, and procedures to perform the complicated head and neck procedures at Trident Medical Center in North Charleston that the team members have historically performed at MUSC.

30. MUSC's patient lists are also confidential and proprietary information belonging to MUSC, not to any individual employee. This information is not available to the general public and is not in the public domain.

31. On August 31, 2021, defendant Davis attempted to obtain MUSC's patient lists. **Exhibit #8**.

[3] The email from defendant physician Hornig has been filed with the court, but the instrument list attached to the email is highly confidential and will be provided to the court on a confidential basis. It will not be part of the public record.

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32. The amount of revenue generated by MUSC and the physician's relative value unit or "RVU" are confidential and proprietary information belonging to MUSC, not to any individual employee. This information is not available to the general public and is not in the public domain.

33. Approximately six (6) months prior to announcing his resignation from MUSC, defendant physician Day obtained his RVU and salary for the past ten (10) years. In addition, defendant physician Day obtained this information for defendant physicians Sharma, Lentsch, and Hornig as well. Defendant physician Day obtained this information as evidenced by the email correspondence in **Exhibit #9**.

34. MUSC's case logs are also confidential and proprietary information belonging to MUSC. This information is not available to the general public and is not in the public domain.

35. After resigning from MUSC, defendant physician Day obtained his case logs for fiscal years 2019, 2020, and 2021. Defendant physician Day obtained this information as evidenced by the email correspondence in **Exhibit #10**.

36. In addition, defendants Davis and Neskey obtained confidential information concerning MUSC's residents and fellows as evidenced by **Exhibit #14** and **Exhibit #15**.

37. In **Exhibit #14**, defendant Davis obtained information about MUSC's residents' salaries.

38. In **Exhibit #15**, defendant Neskey obtained the signed contracts for the incoming fellows in MUSC's Fellowship Program.

39. The information reflected in **Exhibits #14 and #15** are confidential and proprietary information belonging to MUSC. This information is not available to the general public and is not in the public domain.

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IV. MUSC's HNO Fellowship Program

40. In 2003, in furtherance of its tri-partite mission of education, research, and clinical excellence, a fellowship program was established in the HNO Division, the Fellowship in Surgical Oncology and Microvascular Reconstruction of the Head and Neck at MUSC ("HNO Fellowship Program"). Each academic year, two fellows who have completed their residencies are employed by MUSC and, through the HNO Fellowship Program, receive the highest level of training in the management and surgical treatment of head and neck cancer to physicians.

41. The HNO Fellowship Program became accredited by the American Head and Neck Society ("AHNS"), the largest organization in North America for the advancement of research and education in head and neck oncology. In 2010, the first fellow graduated from the HNO Fellowship Program.

42. AHNS-accredited fellowship programs are surveyed by AHNS's Advanced Training Council ("ATC"), which evaluates each program by applying established criteria set forth in its published Qualifications and Duration of Fellowship in Head and Neck Surgical Oncology and Research ("ATC Guidelines"). Each fellowship program is re-evaluated at five (5) year intervals or upon significant changes to the program. There are less than fifty (50) AHNS-accredited fellowship programs in the United States.

43. The reputational benefits and distinction to MUSC because of the AHNS accreditation of its HNO Fellowship Program cannot be quantified. In my career in academic medicine, such distinction materially assists an academic health system, including MUSC, with recruiting high-quality faculty and attracting research funding opportunities and students interested in research.

44. Because there are a limited number of AHNS-accredited fellowship programs in the United States, completion of an accredited fellowship provides physician fellows with critical credentials

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to enter into a career in academic medicine. Although other non-accredited institutions may offer what they label as a "fellowship," in my experience, lack of AHNS accreditation is a negative factor considered by academic institutions when hiring physicians who have participated in an unaccredited fellowship. This primarily is because, in my opinion, there is a lack of oversight and accountability for the qualitative and quantitative multidisciplinary experiences required by an AHNS-accredited fellowship program.

45. MUSC's HNO Fellowship Program has maintained continuous accreditation since 2010. In 2019, AHNS re-accredited the MUSC's HNO Fellowship Program based on the following information:

(a) Patients are referred from the Southeast Region of the United States with over ninety percent (90%) of referrals from South Carolina through the Head & Neck Nurse Navigator, Julie Akers.[4] All patients with advanced stage HNSCC, endocrine, skull base, cutaneous, and sarcoma are coordinated to see all multidisciplinary specialists at their first visit as appropriate. This would include Head and Neck Surgery, Medical Oncology, Radiation Oncology, Dental, Speech, Endocrine, Dermatology, Geneticist, and Neurosurgery as indicated.

(b) Interdisciplinary surgical activities include that all specialists noted above coordinate surgical care prospectively and joint cases are performed often with Head and Neck Surgery, Head and Neck Reconstructive Surgery, Neurosurgery, Vascular Surgery, Thoracic Surgery and GI Surgery as needed.

(c) During the previous academic year, MUSC evaluated 1,628 head and neck cancer patients, of which 485 patients were treated surgically.

[4] On November 17, 2021, Julie Molony (f/k/a Julie Akers) submitted her resignation to MUSC. On information and belief, Ms. Molony is leaving MUSC to work at Trident.

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(d) During each fellow's one-year HNO Fellowship, he or she is expected to operate on over 700 patients and participate in over 80 major head and neck operations.

46. Currently, Trident Medical Center in North Charleston does not have a fellowship program for head and neck oncology, and it will not have a fellowship program when the defendant physicians begin work at Trident Medical Center. For purposes of evaluating defendant physicians' motivations for bringing the current fellows with them to Trident, it is important to note that in addition to providing educational experiences, the use of fellows has been an integral part of the success and innovation of MUSC's HNO Division. Fellows are essential in providing necessary physician-hours during the long and complicated procedures. Without the fellows, the physicians themselves would be required to be present at all times for these long operations.

47. One of the defendant physicians, David M. Neskey, served as the Fellowship Director for MUSC's HNO Fellowship Program.

48. After announcing his intent to resign from MUSC but while still employed by MUSC and while still serving as Director of MUSC's HNO Fellowship Program, defendant physician Neskey stated that the defendant physicians "plann[ed] on having [the fellows] transition with us." **Exhibit #11**.

49. Based on defendant Neskey's statement, the defendant physicians planned on taking the fellows at MUSC to Trident Medical Center, once the defendant physicians started working for HCA.

50. In addition, as reflected in the email correspondence identified as **Exhibit #12**, after announcing his intent to resign from MUSC but while still employed by MUSC and while still serving as Director of MUSC's HNO Fellowship Program, defendant physician Neskey contacted the AHNS to attempt to transfer the existing fellows at MUSC to HCA despite the lack of any

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AHNS-accredited program at Trident. Specifically, Defendant Neskey, without notifying anyone else at MUSC, directly contacted the AHNS ATC to advise them of the planned departures of the defendant physicians and engaged in multiple subsequent correspondence with the AHNS Co-Chairs, Drs. Don Weed and Amy Hessel, without notifying anyone at MUSC of this correspondence. Instead, defendant Neskey prepared a written statement to the ATC responding to the specific questions posed by them.

51. In further attempts to transfer the existing fellows from MUSC to Trident, on or before September 8, 2021, Defendant Neskey requested that defendant Day's administrative assistant forward him a copy of the ATC Accreditation Package for the MUSC HNO Fellowship Program that was completed in October 2019—a forty-six (46) page document containing all of the detailed information needed for MUSC to obtain its ATC Accreditation of the HNO Fellowship Program. Subsequently, on or before September 13, 2021, Defendant Neskey requested that the AHNS Associate Executive Director forward him a blank AHNS Fellowship Program application, reflecting Defendant Neskey's clear intent to use the MUSC 2019 detailed packet to support an application for a new accredited fellowship program to be established at defendant HCA's facilities.

52. Following defendant physician Neskey's email, the AHNS sent formal correspondence to MUSC, which is identified as **Exhibit #13**, regarding the continued accreditation of the HNO Fellowship Program at MUSC. This correspondence was copied to MUSC's current two (2) fellows and the incoming Academic Year 2022-2023 fellows who have committed to MUSC's HNO Fellowship Program.

53. On November 9, 2021, AHNS sent out a mass email to its approximately fifty (50) Fellowship Program Directors nationwide, advising of the "major disruption" to MUSC's HNO

Fellowship Program due to the impending departure of the defendant physicians. In this correspondence, AHNS advised that given the efforts by MUSC to devote and recruit resources to the HNO Division, the current fellows' education experience will be sufficient to meet the AHNS accreditation requirements. However, AHNS further advised that for the incoming 2022-2023 MUSC fellows, they would be released from their commitments to come to MUSC next year. In addition, AHNS has deferred any decision as to whether MUSC can participate in the 2023-2024 fellowship "match" cycle, which is scheduled to begin within the next two (2) months.

54. Over my entire career, I have never seen or heard of a group of physicians engage in a wholesale abandonment of their students, colleagues, and patients similar to what the defendant physicians have orchestrated over the past several months. In the medical centers I have been associated with, like the Vanderbilt Medical Center in Nashville, Tennessee, from time to time physicians did leave to take an opportunity to work in the HCA Health System in Nashville, but these departures were carried out in an orderly and well-timed fashion so that no harm came to any of the trainees or to the patients. In the current situation outlined above, their continued actions will cause reputational harm to MUSC and will endanger MUSC's ability to recruit new fellows in future years.

VI. Potential Irreparable Harm

55. As a result of the actions set forth in this affidavit, MUSC's confidential and proprietary information is in the hands of a for-profit healthcare facility, HCA, and of soon-to-be HCA employees.

56. MUSC is concerned for patients suffering from head and neck cancers. It is concerned that another healthcare facility (and former MUSC employees) may seek to use MUSC's confidential and proprietary information to try to emulate those complex procedures that have been historically

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performed by and at MUSC at a facility that, upon information and belief, is not capable of accommodating such procedures.

57. In addition, as a result of the actions set forth in this affidavit, MUSC's HNO Fellowship Program is under attack and pursuit by soon-to-be HCA employees.

58. As long as MUSC's HNO Fellowship Program has existed, it has been an integral part of innovation, research and training. It has assisted tremendously in the extremely important task of training the next generation of healthcare providers, and it has played a significant part in extending and making more enjoyable the lives of those who have been touched by cancer.

59. MUSC needs to preserve its confidential and proprietary information and its HNO Fellowship Program, so it may continue with its mission to preserve and optimize human life in South Carolina and beyond through education, research and patient care.

FURTHER AFFIANT SAYETH NOT.

R. N. DuBois

Raymond N. DuBois, MD, PhD

SWORN TO AND SUBSCRIBED before
me this 19th day of November, 2021.

Michelle M Shanahan
Notary Public for S.C.

Michelle M. Shanahan
Print Name

My Commission Expires: 6/10/2026

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, v. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC; TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA, Defendants.	)	Civil Action No. _____ AFFIDAVIT OF DAVID S. LEVITT

I, David S. Levitt, after being duly sworn deposes and says:

1. I am the Managing Partner of Levitt Healthcare Affiliates. I have a Master's in Health Administration ("MHA") from George Washington University and over 30 years of experience in health care planning and health care finance.

2. Over the course of my career, I have assisted more than 675 health care clients with strategic planning, business development, product line planning, and marketing. I have assisted in the preparation of more than 1,250 Certificate of Need ("CON") applications, providing, inter alia, analyses of relevant markets for services, utilization projections, and financial forecasts.

3. I have served and have been qualified as an expert witness in health planning, healthcare finance, and financial feasibility in five States, including South Carolina, and I have

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provided testimony on all manner of health care services, including new hospital development. A copy of my CV is included as **Attachment 1**.

4. I have been engaged by Medical University of South Carolina ("MUSC"), Medical University Hospital Authority ("MUHA"), and related organizations for the past 20+ years to assist with strategic planning, business development, product line planning, market analysis, product line profiling, merger, acquisition and joint venture analysis and structure, developing competitor analysis, identifying strategies for market positioning, projecting utilization changes with strategy implementation, projecting financial effect of strategy implementation, financial modeling of market share, patient composition, revenue, payor mix, contractual adjustments, and operating expenses variations, as well as product line development and revenue stream analysis.

5. Over the course of my 20+ years of engagements with MUHA, I have been involved in approximately 75 CON applications for MUHA to develop additional resources, services and facilities in South Carolina.

6. I have testified over 50 times in CON appeal hearings and trials, of which 14 times were in South Carolina.

7. On behalf of my client, Medical University Hospital Authority ("MUHA"), I performed an extensive review of publicly available financial information on HCA as well as Certificate of Need materials, records and correspondences related to the South Carolina Certificate of Need process.

8. In reviewing Certificate of Need records since 2014, Trident and related companies have, as declared affected parties, opposed at least 10 CON applications submitted by MUHA, whose total project expenditures total over **$463,500,000**. They include:

(a) 4 OR Pediatric ASC - $26.4 million

(b) Pediatric Imaging Center - $39.8 Million

(c) Additional Linear Accelerator North Charleston - $8.1 million

(d) Ambulatory Surgery Center - $36.0 million

(e) 6th linear Accelerator - $9.8 million

(f) Freestanding Emergency Department (FSED) - $13.6 million

(g) NICU Expansion - $2 million

(h) Community Hospital - $325 million

(i) NICU Expansion - $2.8 million

9. MUHA is both a teaching hospital and referral center and is South Carolina's only academic medical center. As an academic medical center or teaching hospital, MUHA is at the forefront of the latest advances in medicine, with world-class physicians, groundbreaking research and technology that is often among the first of its kind in the world. Patients also benefit from a multidisciplinary team approach to care that involves the close collaboration of specialists from many different areas. MUHA and its affiliates offer a wide range of services to a large population base residing primarily in South Carolina and extending across the state and beyond. Among the services provided on the hospital's campus is a full range of emergency, maternity, pediatric, medical/surgical and diagnostic services. MUHA serves as an academic training facility for numerous medical residency programs. With **54** different medical specialty residency training programs, the hospital serves as a valuable resource for educating and preparing future physicians.

10. MUHA is a nine-hospital integrated healthcare system with multiple service locations throughout the state. The main hospital, MUSC Health University Medical Center in Charleston is one of five Level I adult trauma centers in the state, the only Level 4 NICU provider, and the only Level I pediatric trauma provider.

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11. Trident is a two-hospital tertiary community provider that offers Level II trauma services and Intermediate Care level neonatal services. Trident does not offer any subspecialty medical training options and offers only limited **(3)** general medical residency training options (Emergency Medicine, General Surgery and Internal Medicine).

12. Trident routinely transfers many critically ill patients to MUSC because Trident lacks the ability to provide the necessary specialized care and resources to these patients.

13. MUSC Health University Medical Center's current complement of Intensive Care Beds (ICU) includes 59 medical/surgical, 21 critical care, 47 pediatric, 16 neurosurgical/neurological for a total of **143** beds.

14. Trident operates 28 medical surgical ICU beds at Trident Medical Center and 8 medical surgical ICU beds at Summerville Medical Center for a total of **36** beds.

15. Trident filed a CON application on August 30, 2021 to expand its existing operating room and perioperative space at Trident Medical Center with a total project cost of $20,168,000. The Surgery Department expansion will be composed of 9,785 new Building Gross Square Feet (BGSF) and 2,856 renovated BGSF for a total addition of 12,641 BGSF. The project will add 3 additional, operating rooms ("OR"), 8 pre-/post-operative rooms, and an additional post-anesthesia care unit ("PACU") recovery bay. A new drop-off entry canopy and lobby with a connecting corridor to the existing registration area will also be included, along with storage and other necessary administrative areas. The proposed project also includes shelled space, which will initially be used as storage but could be converted to serve as an additional OR in the future. The renovations and expansion are necessary because the current physical plant cannot accommodate the complex and specialized surgical cases that are expected to be performed by newly recruited physicians.

FURTHER AFFIANT SAYETH NOT.

David S. Levitt
Levitt Healthcare Affiliates

SWORN TO AND SUBSCRIBED before me this 19th day of November, 2021.

Notary Public for S.C.

Frank Garlington jr
Print Name

My Commission Expires: 2-27-2028



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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS
MEDICAL UNIVERSITY OF SOUTH CAROLINA and UNIVERSITY MEDICAL ASSOCIATES OF THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, Plaintiffs, v. HCA HEALTHCARE, INC., TRIDENT MEDICAL CENTER, LLC, TERRY A. DAY, BETSY KAY DAVIS, JOSHUA D. HORNIG, ERIC J. LENTSCH, DAVID M. NESKEY, and ANAND K. SHARMA, Defendants.	)	Civil Action No. _____ AFFIDAVIT OF. PATRICK J. CAWLEY

I, Patrick J. Cawley, M.D., MHM, FACHE, being duly sworn deposes and says:

I. Background about Dr. Cawley

1. I am of sound mind and body, over the age of eighteen (18), and competent to offer testimony.

2. I offer this affidavit based upon my personal knowledge and based upon information and records maintained by the Medical University of South Carolina ("MUSC").

3. I am currently the Chief Executive Officer of MUSC Health and Vice-President for Health Affairs of MUSC, and Associate Professor of Medicine.

4. I started working at MUSC in 2003 as the Associate Chief Medical Officer. In 2006, I became the Chief Medical Officer of the Medical University Hospital Authority ("MUHA"), which operates hospitals, clinics and other health care and related facilities as set forth

in section 59-123-60 of the South Carolina Code of Laws. In 2013, I became the Chief Executive Officer of MUSC Health.

5. I am a Member of the University Medical Associates ("UMA"), the Faculty Practice Plan of MUSC, and I serve on UMA's Board of Directors and its Executive Committee. The UMA is a South Carolina not-for-profit corporation pursuant to Title 33 Chapter 11 of the South Carolina Code of Laws.

II. MUSC's Head & Neck Oncology Division

6. MUSC has provided specialty care in Otolaryngology (colloquially known as "ear, nose, and throat") to South Carolina citizens for over a century. Over the past twenty (20) years, the Department of Otolaryngology has maintained national recognition, including ranking in the top ten (10) departments in its specialty in National Institute of Health ("NIH") research funding, offering a top ten (10) residency program, and achieving U.S. News and World Report rankings in the top fifteen (15) ear, nose, and throat services in the country. The Department's faculty conduct education, research, and clinical services in nine (9) different subspecialties, including Head and Neck Oncology.

7. MUSC's Department of Otolaryngology in the Division of Head and Neck Oncology ("HNO Division") is one of the largest programs in the country devoted to the care of the head and neck cancer patient. It was developed and has continuously evolved since the current Department Chair, Paul Lambert, M.D., and defendant physician Day arrived at MUSC in 1999. In 2015, MUSC opened the Wendy and Keith Wellin Head and Neck Oncology Center after receiving a generous donation from the Wellin family. The Center is a partner with MUSC Hollings Cancer Center ("the Center"), the only NCI-designated cancer center in South Carolina, and the Department contributed $500,000 to the capital needed to establish a state-of-the-art center.

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8. At the Center, a comprehensive multi-disciplinary team comprised of surgeons, radiation oncologists, medical oncologists, maxillofacial prosthodontists, speech and swallowing specialists, nutritionists, and social workers have provided point-of-service, coordinated care from an initial patient encounter through treatment and survivorship. Overall, 750 to 800 new patients with head and neck cancer are evaluated at MUSC annually.

9. Prior to their effective resignation dates, each of the defendant physicians in this action were long-term faculty members and medical care providers, working in MUSC's HNO Division. In addition, each of the defendant physicians in this action were, at all relevant times, Members of the UMA.

10. Defendant Davis joined the Department of Otolaryngology in 1995. After completing his own fellowship at MUSC in 2005, Defendant Hornig joined the Division. Defendant Lentsch joined the Division in 2006. Defendant Neskey joined the Division in 2014. Defendant Sharma joined the Department of Radiation Oncology in 2001, and has held a faculty appointment in the Department of Otolaryngology since 2003. Over time, MUSC developed and nurtured a comprehensive team of clinicians to furnish the highest levels of care to the hundreds of patients MUSC treats annually. The complete list of the team members providing this treatment to patients on behalf of MUSC is attached hereto as **Exhibit #3.**

11. With certain exceptions,[1] the individuals reflected in **Exhibit #3** are current employees of MUSC as of the date of this affidavit. Effective December 1, 2021, the defendant physicians will no longer be a part of this team, as they have resigned from MUSC, and they will,

[1] Sara Jasper, Caitlin Mengler, Kiely St. Germain, and Hannah Feltner all resigned and left MUSC during October 2021 and, upon information and belief, are or will be working at Trident Medical Center in North Charleston for HCA.

upon information and belief, work for Trident Medical Center in North Charleston, which is operated by defendant HCA Healthcare, Inc. ("HCA").

12. Unlike MUSC, which is a public academic health system with a tri-partite mission of education, research, and providing clinical excellence to all citizens of South Carolina and beyond, Trident Medical Center is a private for-profit healthcare facility and its parent company, HCA, is a publicly-traded corporation obligated to earn profits for its shareholders.

13. Historically, Trident Medical Center has not performed the complex type of head and neck procedures at its North Charleston location that MUSC's HNO Division performs. The types of medical procedures performed by MUSC's HNO Division are long, multi-phase and complicated procedures, often lasting up to ten (10) to fifteen (15) hours.

14. Upon information and belief, Trident Medical Center does not have the facilities, equipment, manpower, and know-how to provide patients with the level of care that MUSC's HNO Division provides. Notably, simultaneously with the defendant physicians' resignations from MUSC, Trident Medical Center filed a Certificate of Need Application, attached hereto as **Exhibit #4**, to expand its facility in an attempt to achieve the capability to perform the complex type of head and neck procedures at its North Charleston location. In addition, even if Trident's facilities are currently sufficient to support a ten (10) to fifteen (15) hour surgery, but for defendant HCA's wholesale poaching of MUSC's HNO Division's valuable resources and know-how, Trident would be incapable of providing any quality head and neck oncology surgical services for many years.

15. MUSC built its HNO Division over two decades and developed the processes to perform these operations over the course of the last two decades. MUSC did so not with an eye not towards maximizing revenue, but with the goal of fulfilling its institutional and statutory

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mission, which is to preserve and optimize human life in South Carolina and beyond through education, research and patient care.

III. MUSC's Confidential & Proprietary Information

16. During the last two decades, when MUSC has been building its HNO Division, it has identified and purchased the equipment necessary to perform these procedures, identified the team members necessary to perform these procedures, and developed physician preference cards and instrument lists to perform these procedures.

17. MUSC's physician preference cards are catalogues of specific tools, supplies, and room setup that a surgeon prefers for a particular type of surgery. MUSC's physician preference cards are confidential and proprietary information belonging to MUSC, not to any individual employee.

18. MUSC's instrument lists identify the instruments specific surgeons need to perform certain procedures. MUSC's instrument lists are confidential and proprietary information belonging to MUSC, not to any individual employee.

19. MUSC's physician preference cards and instrument lists enable the team members to perform the complicated head and neck procedures MUSC's HNO Division has historically performed.

20. MUSC's physician preference cards and instrument lists are not disclosed to the public and are not available in the public domain.

21. MUSC maintains policies and procedures to protect its confidential and proprietary information from disclosure to unauthorized recipients. In addition, MUSC limits access to its confidential and proprietary information. MUSC only allows those persons to access such

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information who have a legitimate need to do so. To the extent one attempts to access such information remotely, MUSC uses a two-factor authentication system.

22. An example of the confidentiality obligations imposed on MUSC's employees can be found in the Code of Conduct, which is part of the MUSC Faculty Handbook. The Code of Conduct expressly states that "[n]o employee shall disclose confidential information or use such information for his or her personal benefit." **Exhibit #5**.

23. While still employed by MUSC but after notifying MUSC of their intent to resign, upon information and belief, defendant physicians Day, Hornig, Lentsch, and Neskey directed a registered nurse employed by MUSC, Jamie Wilsgard, to send physician preference cards from MUSC to HCA. The email correspondence where Ms. Wilsgard transmitted these physician cards to HCA is identified as **Exhibit #6**[2].

24. Defendant physicians Day, Hornig, Lentsch, and Neskey did not have the authority to transmit MUSC's physician preference cards to HCA, and by doing so, defendant physicians Day, Hornig, Lentsch, and Neskey violated MUSC's policies and procedures.

25. While still employed by MUSC but after notifying MUSC of his intent to resign, defendant physician Hornig obtained MUSC's instrument list and sent this information to HCA. Defendant Hornig's transmission of this information to HCA is reflected in **Exhibit #7**. [3]

26. Upon information and belief, Trident Medical Center never had the physician preference cards and instrument lists necessary to enable defendant physicians (or other

[2] By its very nature, the part of Exhibit #6 that contains the physician preference cards is highly confidential and will be provided to the court on a confidential basis. It will not be part of the public record.

[3] The email from defendant physician Hornig has been filed with the court, but the instrument list attached to the email is highly confidential and will be provided to the court on a confidential basis. It will not be part of the public record.

physicians) to quickly develop a facility, processes, and procedures to efficiently perform the type of head and neck procedures that have been historically performed by and at MUSC.

27. Without the physician preference cards and instrument lists, the defendant physicians would not be able to quickly establish the facilities, processes, and procedures to perform the complicated head and neck procedures at Trident Medical Center in North Charleston that the team members have historically performed at MUSC.

28. MUSC's patient lists are also confidential and proprietary information belonging to MUSC, not to any individual employee. This information is not available to the general public and is not in the public domain.

29. On August 31, 2021, defendant Davis attempted to obtain MUSC's patient lists. Exhibit #8.

30. The amount of revenue generated by MUSC and the physician's relative value unit or "RVU" are confidential and proprietary information belonging to MUSC, not to any individual employee. This information is not available to the general public and is not in the public domain.

31. Approximately six (6) months prior to announcing his resignation from MUSC, defendant physician Day obtained his RVU and salary for the past ten (10) years. In addition, defendant physician Day obtained this information for defendant physicians Sharma, Lentsch, and Hornig as well. Defendant physician Day obtained this information as evidenced by the email correspondence in **Exhibit #9**.

32. MUSC's case logs are also confidential and proprietary information belonging to MUSC. This information is not available to the general public and is not in the public domain.

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33. After resigning from MUSC, defendant physician Day obtained his case logs for fiscal years 2019, 2020, and 2021. Defendant physician Day obtained this information as evidenced by the email correspondence in **Exhibit #10**.

34. In addition, defendants Davis and Neskey obtained confidential information concerning MUSC's residents and fellows as evidenced by **Exhibit #14** and **Exhibit #15** .

35. In **Exhibit #14**, defendant Davis obtained information about MUSC's residents' salaries.

36. In Exhibit #15, defendant Neskey obtained the signed contracts for the incoming fellows in MUSC's Fellowship Program.

37. The information reflected in **Exhibits #14 and #15** are confidential and proprietary information belonging to MUSC. This information is not available to the general public and is not in the public domain.

IV. Defendants' Plan to Leave MUSC for HCA and to Solicit Others

38. The documents and emails located on the defendant physicians' MUSC.edu email show the defendant physicians' orchestrated plan to leave MUSC *en masse* and attempt to transport and deliver an entire practice to HCA:

a. On February 11, 2021, defendants Day and Neskey are invited by HCA agent Dax Kurbegov to meet in Nashville following defendant Neskey's "productive ongoing dialogues with the South Atlantic team . . . ." **Exhibit #16**. In the email, Mr. Kurbegov states to defendant Neskey, "Terry Day may have already spoken to you about this opportunity."

b. On March 4, 2021, defendants Day, Sharma, and Davis communicate regarding "discussions around non-compete and legal concerns with future plans." **Exhibit #17**.

c. On June 2, 2021, defendant Day confirms HCA meeting to finalize contracts with HCA and discuss departure from MUSC. **Exhibit #18**.

d. On June 30, 2021, defendant Sharma drafts list of questions related to timing of giving MUSC notice of the defendants' plans to resign, and buy-out of non-compete agreements. **Exhibit #19**.

e. On June 14, 2021, defendant Lentsch provides copy of his Employment Contract with HCA to First National Bank. **Exhibit #20**.

f. On August 19, 2021, defendant Day resigns. **Exhibit #21**.

g. On August 24, 2021, HCA Onboarding Administration emails Dr. Brad W. Neville (part of the oral pathology as reflected in **Exhibit #3**) to perform background check prior to HCA's hiring of Dr. Neville. **Exhibit #22**.

h. On August 26, 2021, HCA Physician Services Group schedules meeting with defendant Day and Dr. Neville. **Exhibit #23**.

i. On August 27, 2021, defendant Neskey resigns. **Exhibit #24**.

j. On August 31, 2021, defendant Hornig resigns. **Exhibit #25**.

k. On August 31, 2021, defendant Lentsch asks MUSC administrative assistant to put his resignation on letterhead. **Exhibit #26**.

l. On August 29, 2021, defendant Davis resigns. **Exhibit #27**.

m. On September 1, 2021, defendant Neskey's counsel asks amount of Neskey's non-compete buy-out. **Exhibit #28**.

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n. On September 2, 2021, defendant Day obtains composite pictures of MUSC ENT Residents 2021-22. **Exhibit #29**.

o. On August 31, 2021, defendant Davis attempted to obtain MUSC's patient lists. **Exhibit #8**.

p. On September 9, 2021, defendant Day obtains his case logs 2019-21 from MUSC personnel. **Exhibit #10**.

q. On September 21, 2021, Acute Care Nurse Practitioner Sara Jasper resigns. **Exhibit #30**. Ms. Jasper is part of the team reflected in **Exhibit #3**.

r. On September 24, 2021, HCA contacts Kym Kittle, Registered Nurse for the Operating Room, for a position at HCA. **Exhibit #31**. Ms. Kittle is part of the team reflected in **Exhibit #3**.

s. On September 26, 2021, defendant Sharma enters into Recruiting Agreement with HCA to recruit a physician for HCA. **Exhibit #32** . Defendant Sharma entered into this Agreement while still an employee of MUSC.

t. On September 26, 2021, HCA recruiter contacts Dr. Ted Meyer at MUSC. **Exhibit #33**. Dr. Meyer is part of the team reflected in **Exhibit #3**.

u. On October 4, 2021, HCA offers employment to Jamie Willsgard, a MUSC registered nurse. **Exhibit #34**.

v. On October 12, 2021, HCA solicits Kym Kittle, Registered Nurse for the Operating Room, to work for HCA. Exhibit #35 (tab 65). Ms. Kittle is part of the team reflected in **Exhibit #3**.

39. During the six (6) month period prior to notifying MUSC of their resignations, Defendant physicians collectively took over 1,000 hours of leave. In addition, their collective

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productivity dropped approximately twenty-five percent (25%) from the same time period during the prior year.

V. MUSC's HNO Fellowship Program

40. In 2003, in furtherance of its tri-partite mission of education, research, and clinical excellence, a fellowship program was established in the HNO Division, the Fellowship in Surgical Oncology and Microvascular Reconstruction of the Head and Neck at MUSC ("HNO Fellowship Program"). Each academic year, two fellows who have completed their residencies are employed by MUSC and, through the HNO Fellowship Program, receive the highest level of training in the management and surgical treatment of head and neck cancer to physicians.

41. The HNO Fellowship Program became accredited by the American Head and Neck Society ("AHNS"), the largest organization in North America for the advancement of research and education in head and neck oncology. In 2010, the first fellow graduated from the HNO Fellowship Program.

42. AHNS-accredited fellowship programs are surveyed by AHNS's Advanced Training Council ("ATC"), which evaluates each program by applying established criteria set forth in its published Qualifications and Duration of Fellowship in Head and Neck Surgical Oncology and Research ("ATC Guidelines"). Each fellowship program is re-evaluated at five (5) year intervals or upon significant changes to the program. There are less than fifty (50) AHNS-accredited fellowship programs in the United States.

43. The reputational benefits and distinction to MUSC because of the AHNS accreditation of its HNO Fellowship Program cannot be quantified. In my career in academic

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medicine, such distinction materially assists an academic health system, including MUSC, with recruiting high-quality faculty and attracting research funding opportunities and students interested in research.

44. Because there are a limited number of AHNS-accredited fellowship programs in the United States, completion of an accredited fellowship provides physician fellows with critical credentials to enter into a career in academic medicine. Although other non-accredited institutions may offer what they label as a "fellowship," lack of AHNS accreditation is a negative factor considered by academic institutions when hiring physicians who have participated in an unaccredited fellowship. This primarily is because there is a lack of oversight and accountability for the qualitative and quantitative multidisciplinary experiences required by an AHNS-accredited fellowship program.

45. MUSC's HNO Fellowship Program has maintained continuous accreditation since 2010. In 2019, AHNS re-accredited the MUSC's HNO Fellowship Program based on the following information:

a. Patients are referred from the Southeast Region of the United States with over ninety percent (90%) of referrals from South Carolina through the Head & Neck Nurse Navigator, Julie Akers.[4] All patients with advanced stage HNSCC, endocrine, skull base, cutaneous, and sarcoma are coordinated to see all multidisciplinary specialists at their first visit as appropriate. This would include Head and Neck Surgery, Medical Oncology, Radiation Oncology, Dental, Speech, Endocrine, Dermatology, Geneticist, and Neurosurgery as indicated.

[4] On November 17, 2021, Julie Molony (f/k/a Julie Akers) submitted her resignation to MUSC. On information and belief, Ms. Molony is leaving MUSC to work at Trident.

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b. Interdisciplinary surgical activities include that all specialists noted above coordinate surgical care prospectively and joint cases are performed often with Head and Neck Surgery, Head and Neck Reconstructive Surgery, Neurosurgery, Vascular Surgery, Thoracic Surgery and GI Surgery as needed.

c. During the previous academic year, MUSC evaluated 1,628 head and neck cancer patients, of which 485 patients were treated surgically.

d. During each fellow's one-year HNO Fellowship, he or she is expected to operate on over 700 patients and participate in over 80 major head and neck operations.

46. Currently, Trident Medical Center in North Charleston does not have a fellowship program for head and neck oncology, and it will not have a fellowship program when the defendant physicians begin work at Trident Medical Center. For purposes of evaluating defendant physicians' motivations for bringing the current fellows with them to Trident, it is important to note that in addition to providing educational experiences, the use of fellows has been an integral part of the success and innovation of MUSC's HNO Division. Fellows are essential in providing necessary physician-hours during the long and complicated procedures. Without the fellows, the physicians themselves would be required to be present at all times for these long operations.

47. One of the defendant physicians, David M. Neskey, served as the Fellowship Director for MUSC's HNO Fellowship Program.

48. After announcing his intent to resign from MUSC but while still employed by MUSC and while still serving as Director of MUSC's HNO Fellowship Program, defendant physician Neskey stated that the defendant physicians "plann[ed] on having [the fellows] transition with us." **Exhibit #11**.

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49. Based on defendant Neskey's statement, the defendant physicians planned on taking the fellows at MUSC to Trident Medical Center, once the defendant physicians started working for HCA.

50. In addition, as reflected in the email correspondence identified as **Exhibit #12**, after announcing his intent to resign from MUSC but while still employed by MUSC and while still serving as Director of MUSC's HNO Fellowship Program, defendant physician Neskey contacted the AHNS to attempt to transfer the existing fellows at MUSC to HCA despite the lack of any AHNS-accredited program at Trident. Specifically, Defendant Neskey, without notifying anyone else at MUSC, directly contacted the AHNS ATC to advise them of the planned departures of the defendant physicians and engaged in multiple subsequent correspondence with the AHNS Co-Chairs, Drs. Don Weed and Amy Hessel, without notifying anyone at MUSC of this correspondence. Instead, defendant Neskey prepared a written statement to the ATC responding to the specific questions posed by them.

51. In further attempts to transfer the existing fellows from MUSC to Trident, on or before September 8, 2021, Defendant Neskey requested that defendant Day's administrative assistant forward him a copy of the ATC Accreditation Package for the MUSC HNO Fellowship Program that was completed in October 2019—a forty-six (46) page document containing all of the detailed information needed for MUSC to obtain its ATC Accreditation of the HNO Fellowship Program. Subsequently, on or before September 13, 2021, Defendant Neskey requested that the AHNS Associate Executive Director forward him a blank AHNS Fellowship Program application, reflecting Defendant Neskey's clear intent to use the MUSC 2019 detailed packet to support an application for a new accredited fellowship program to be established at defendant HCA's facilities.

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52. Following defendant physician Neskey's email, the AHNS sent formal correspondence to MUSC, which is identified as **Exhibit #13**, regarding the continued accreditation of the HNO Fellowship Program at MUSC. This correspondence was copied to MUSC's current two (2) fellows and the incoming Academic Year 2022-2023 fellows who have committed to MUSC's HNO Fellowship Program.

53. On November 9, 2021, AHNS sent out a mass email to its approximately fifty (50) Fellowship Program Directors nationwide, advising of the "major disruption" to MUSC's HNO Fellowship Program due to the impending departure of the defendant physicians. In this correspondence, AHNS advised that given the efforts by MUSC to devote and recruit resources to the HNO Division, the current fellows' education experience will be sufficient to meet the AHNS accreditation requirements. However, AHNS further advised that for the incoming 2022-2023 MUSC fellows, they would be released from their commitments to come to MUSC next year. In addition, AHNS has deferred any decision as to whether MUSC can participate in the 2023-2024 fellowship "match" cycle, which is scheduled to begin within the next two (2) months.

VI. Irreparable Harm

54. As a As a result of the actions set forth in this affidavit, MUSC's confidential and proprietary information is in the hands of a for-profit healthcare facility, HCA, and of soon-to-be HCA employees.

55. MUSC is concerned for patients suffering from head and neck cancers. It is concerned that another healthcare facility (and former MUSC employees) may seek to use MUSC's confidential and proprietary information to try to emulate those complex procedures that have been historically performed by and at MUSC at a facility that, upon information and belief, is not capable of accommodating such procedures.

56. In addition, as a result of the actions set forth in this affidavit, MUSC's HNO Fellowship Program is under attack and pursuit by soon-to-be HCA employees.

57. As long as MUSC's HNO Fellowship Program has existed, it has been an integral part of innovation, research and training. It has assisted tremendously in the extremely important task of training the next generation of healthcare providers, and it has played a significant part in extending and making more enjoyable the lives of those who have been touched by cancer.

58. MUSC needs to preserve its confidential and proprietary information and its HNO Fellowship Program, so it may continue with its mission to preserve and optimize human life in South Carolina and beyond through education, research and patient care.

FURTHER AFFIANT SAYETH NOT.

Patrick J. Cawley, M.D., MHM, FACHE

SWORN TO AND SUBSCRIBED before me this 9th day of November, 2021.

Notary Public for S.C.

Angelia M Baldwin

Print Name

My Commission Expires: August 13, 2023

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