

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

MICHAEL D. BLACK, MD, MBA

Plaintiff,

v.

No. _____

CABLE NEWS NETWORK, INC. (“CNN”);
ELIZABETH COHEN;
JOHN BONIFIELD;
DANA FORD;
ANDERSON COOPER; AND
KELLY ROBINSON

Defendants.

COMPLAINT

Plaintiff Michael D. Black, MD, MBA (“Dr. Black”), by and through his attorneys, brings the following Complaint against Defendants Cable News Network, Inc. (“CNN”), Elizabeth Cohen (“Cohen”), John Bonifield (“Bonifield”), Dana Ford (“Ford”), Anderson Cooper (“Cooper”), and Kelly Robinson (“Robinson”), and, in support of his Complaint, avers as follows:

NATURE OF THE ACTION

1. This defamation action arises out of a series of false and defamatory articles and news reports published by CNN, beginning with a June 1, 2015 article—titled “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital”¹—and broadcast video

¹ Elizabeth Cohen & John Bonifield, “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital,” CNN (June 1, 2015) (attached hereto as Exhibit A), *available at* <http://www.cnn.com/2015/06/01/health/st-marys-medical-center>.

news report—titled “The Hospital with a Serious Heart Problem.”² The article and video, which were authored and produced by Defendants Elizabeth Cohen and John Bonifield (collectively with CNN, Dana Ford, Anderson Cooper, and Turner, the “CNN Defendants”), were published to a global audience by the CNN Defendants on CNN’s website, and the video report was further broadcast live on CNN’s cable television station.

2. The goal of the article and video report—which purported to be the product of a yearlong investigation by CNN of the pediatric cardiac surgery program (the “Program”) at St. Mary’s Medical Center (“St. Mary’s”) and Dr. Black, the head of that Program—was not to present an accurate or fair picture of Dr. Black and the Program. Rather, the preconceived goal of the June 1, 2015 article and video report was to manufacture an outrageous, headline-grabbing story about an incompetent, dishonest, and inexperienced doctor leading a surgical program in crisis and recklessly operating on young children to profit at the expense of those children’s lives.

3. The article and video report accomplished that goal. Alongside numerous graphic photographs of infants who had undergone complex surgical procedures to repair potentially fatal cardiac conditions, the article prominently featured Dr. Black, portraying him as a callous, incompetent, and dishonest surgeon motivated to perform surgeries he was not qualified to perform in order to profit financially, even going so far as to juxtapose a photograph of Dr. Black with a bold-face headline stating “Babies as sacrificial lambs” and to claim that Dr. Black made “[a] total mess with newborn babies.” The video report prominently featured and portrayed Dr. Black in the same way and intentionally ignored the numerous children whose lives

² Elizabeth Cohen & John Bonifield, Video: “The Hospital with a Serious Heart Problem” (June 1, 2015) (attached hereto as Exhibit B), *available at* <http://www.cnn.com/videos/health/2015/06/01/the-hospital-with-a-serious-heart-problem.cnn>.

Dr. Black saved by performing complex heart surgeries on them at St. Mary's. Instead, the video report juxtaposed a photograph of Dr. Black with an emotionally-charged interview of parents of the few children Dr. Black was unable to save or prevent known complications, and even rhetorically posed the question why St. Mary's and Dr. Black continued to perform heart surgery on children, and stated that "the answer may come down to one thing: money."

4. Along with these graphic images and remarks from emotionally-charged interviews, the CNN Defendants featured as the centerpiece of their article and video report—and the CNN Defendants' indictment of Dr. Black and the Program—seemingly damning claims: that, according to the CNN Defendants, "[b]y the end of 2013, the mortality rate for babies having heart surgery there [at St. Mary's] was ***three times the national average***," and that "the death rate for open heart surgeries [was] 12.5%, ***more than three times the national average*** of 3.3% cited by the Society of Thoracic Surgeons."³

5. Defendants' statements and insinuations about Dr. Black, the mortality rate for the surgeries he performed, and his supposed lack of competence to perform those surgeries are categorically and demonstrably false. First and foremost, the CNN Defendants entirely and intentionally ignored Dr. Black's extensive surgical training and impeccable record as a pediatric cardiothoracic surgeon. The CNN Defendants consciously failed to mention that Dr. Black is a multiple-fellowship-trained pediatric cardiothoracic surgeon who has performed thousands of successful pediatric cardiac surgeries, has served as Chief of Cardiac Surgery at Stanford's Lucile Packard Children's Hospital, has published numerous papers in peer-reviewed medical journals, has served as a peer-reviewer for multiple medical journals, has received numerous

³ Emphasis added unless otherwise noted.

awards and honors throughout his career in recognition of his surgical abilities, medical research, and humanitarianism, and is a fellow of numerous leading medical societies.

6. Moreover, contrary to Defendants' claims and insinuations, Dr. Black *never* treated "[b]abies as sacrificial lambs," and *never* made "[a] total mess with newborn babies." Rather, Dr. Black met or exceeded the appropriate standards of care for each and every surgical procedure he performed on those children. Dr. Black is an impeccably credentialed surgeon who has devoted his entire life and career to helping some of society's sickest and most vulnerable children, and he took great pains to ensure that the pediatric cardiac surgical program he was recruited to develop at St. Mary's was a first-rate program that minimized risks to the patients it served—in a Palm Beach County/Treasure Coast community that had never before had such a program. All of the surgeries that Dr. Black performed on the children detailed in the article, broadcast, and video report were medically necessary and gave those children the best chance to recover from serious and otherwise fatal heart conditions if left untreated through surgical intervention.

7. Moreover, the centerpiece of the CNN Defendants' article, broadcast, and video report—the claims that "[b]y the end of 2013, the mortality rate for babies having heart surgery there [at St. Mary's] was three times the national average" and that "the death rate for open heart surgeries [was] 12.5%, more than three times the national average of 3.3% cited by the Society of Thoracic Surgeons"—is based not on facts but on a fundamentally flawed pseudo-statistical analysis that intentionally manipulated numbers to artificially—and incorrectly—inflate Dr. Black's mortality rate. Indeed, information from the nationally-renowned Society of Thoracic Surgeons ("STS"), which CNN had in its possession before publishing its defamatory articles and video reports, demonstrates that the Program had earned a two-star rating (along

with all other such programs in Florida)—meaning that the mortality rate for the Program was statistically no different than the national average.

8. The CNN Defendants’ allegations against Dr. Black are not only clearly false, but they are defamatory *per se*. By suggesting that Dr. Black treated “[b]abies as sacrificial lambs” and made “[a] total mess with newborn babies,” and by claiming that Dr. Black’s surgical mortality rate was over three times the national average, the CNN Defendants have attributed to Dr. Black conduct unfit for a medical doctor or surgeon as well as conduct rising to the level of criminality. Moreover, these statements severely prejudiced Dr. Black in his profession as a medical doctor and pediatric cardiothoracic surgeon.

9. The CNN Defendants acted with actual malice when they published the defamatory June 1, 2015 article and video report. The CNN Defendants knew at that time—and, indeed, long before—that their defamatory statements about Dr. Black, including their claims that “[b]y the end of 2013, the mortality rate for babies having heart surgery there [at St. Mary’s] was three times the national average” and that “the death rate for open heart surgeries [was] 12.5%, more than three times the national average of 3.3% cited by the Society of Thoracic Surgeons,” were false or, at the very least, they recklessly disregarded the truth of those statements. For example, the then-CEO of St. Mary’s Medical Center, David Carbone, informed the CNN Defendants that their claimed mortality rate for Dr. Black and the Program at St. Mary’s was incorrect in a letter to Defendants Cohen and CNN on February 27, 2015, ***over three months before the CNN Defendants published the article and video report***. Mr. Carbone informed the CNN Defendants, in no uncertain terms, that “[t]he data you provided does not represent all cases and/or procedures performed as part of the program” and that “[t]he mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.” That letter similarly informed the CNN

Defendants that, far from being a faltering program in crisis, the Program, along with nearly two-thirds of similar programs across the United States, received a two-star ranking from the STS, the leading medical professional data repository that benchmarks the performance of pediatric cardiac programs across the country and that even the CNN Defendants recognize as the “gold standard” in the industry. The CNN Defendants, however, deliberately and recklessly ignored and consciously disregarded this (and other) information and persisted in their predetermined goal of demonizing Dr. Black and the Program.

10. Moreover, and further demonstrating that the CNN Defendants published their defamatory statements about Dr. Black with actual malice, the CNN Defendants repeatedly doubled-down on their false claims, even after being provided with additional information demonstrating their falsity. For example, on June 7, 2015, just six days after the CNN Defendants’ defamatory June 1, 2015 article, broadcast, and video report, St. Mary’s sent to CNN and publicly released a statement that, according to the Fall 2014 STS Congenital Heart Surgery Database Report, the mortality rate for St. Mary’s pediatric cardiac surgery program was 5.3%—not 12.5% as CNN claimed—and explained that that figure had a 95% confidence interval that encompassed the STS National Average 3.4% mortality rate—meaning that there was no statistically significant difference between the St. Mary’s Program’s mortality rate and the national average. Nevertheless, not only did the CNN Defendants continue to repeat their false and defamatory statement that “from 2011 to 2013, the program had a 12.5% mortality rate for open heart surgeries, which is more than three times the national average” in a second article and second broadcast video news report on June 3, 2015, they repeated that false and defamatory claim numerous additional times: in an article on June 5, 2015, in an article and a broadcast report on CNN’s “Newsroom” television program on June 8, 2015, in an article on June 9, 2015, and in an article and broadcast report on CNN’s “New Day” television program on or about June

28, 2015. In so doing, CNN deliberately, recklessly, and with actual malice ignored authoritative information proving the falsity of their claims.

11. Indeed, the CNN Defendants continued to double-down on their false and defamatory claims about Dr. Black and the St. Mary's Program after St. Mary's released its Spring 2015 data from the STS on June 30, 2015. For example, the CNN Defendants repeated their false and defamatory statements about the Program's mortality rate again on August 17, 2015 in yet another article and in a prime-time television report on CNN's "Anderson Cooper 360°" television program, and they revived their false and defamatory statements about the Program and Dr. Black again just last month in a January 13, 2016 article.

12. Make no mistake: the CNN Defendants' false and highly defamatory statements about Dr. Black were not the result of an innocent error or misunderstanding; rather, they were the result of a wanton, malicious, and reckless journalist who was more concerned with writing a series of articles that fit her preconceived narrative about patients being denied proper medical care,⁴ and a malicious and reckless news outlet that was more concerned with attracting viewers and boosting its economic bottom-line in an increasingly competitive news market⁵ than it was about discovering and reporting the truth or actual facts about Dr. Black: a well-respected, impeccably trained, and peer-reviewed published, pediatric cardiothoracic surgeon.

⁴ Elizabeth Cohen, author of the book "The Empowered Patient" and a column for CNN titled "Empowered Patient," has written extensively about her beliefs that hospitals are "truly dangerous" places, that "physicians play favorites," and that the medical system is "truly broken"—and has made significant money doing so. *See, e.g.*, Elizabeth Cohen, *The Empowered Patient* (Ballantine 2010); Elizabeth Cohen, "Why I Write 'Empowered Patient,'" CNN (Aug. 5, 2010), <http://www.cnn.com/2010/HEALTH/08/05/shir.baby.empowered.patient/index.html>.

⁵ According to 2014 Year End cable news viewership metrics, CNN lost viewers from the previous year and significantly trailed FoxNews in viewership metrics across-the-board. *See, e.g.*, Matt Wilstein, "2014 Cable News Ratings: CNN Beats MSNBC in Primetime Demo, Fox Still #1," *Mediaite* (Dec. 30, 2014), <http://www.mediaite.com/tv/2014-cable-news-ratings-cnn-beats-msnbc-in-primetime-demo-fox-still-1>.

13. Moreover, the CNN Defendants extensively promoted their defamatory articles, broadcasts, and video reports through posts on social media websites that repeated their defamatory claims and linked to the defamatory articles and videos—even after the CNN Defendants were well aware that their claims about Dr. Black were false. As a result, the CNN Defendants significantly increased the audience of their articles and video reports and magnified the devastating professional and personal impact on Dr. Black.

14. As a direct result of the CNN Defendants' publication and promotion of their false and defamatory statements to worldwide television and internet audiences, many other local and national media outlets—and even some international media outlets—have republished and reported the CNN Defendants' false and defamatory statements. Indeed, through their promotion of their defamatory publications the CNN Defendants sought to and succeeded in touching off a national media firestorm focused on Dr. Black and St. Mary's. In an environment where false and misleading defamatory accusations can go viral and spread to a global audience in a matter of seconds, the defamatory articles, broadcasts, video reports, and social media posts about Dr. Black did extensive and irreparable harm to Dr. Black and the reputation he had earned through a distinguished career as a nationally renowned pediatric cardiothoracic surgeon.

15. Not surprisingly, the harm to Dr. Black and his reputation caused by the CNN Defendants' defamatory articles, video reports, and social media postings has been significant and irreparable. Dr. Black, a man who has devoted his career and his life to helping his patients, has seen himself vilified in the national press as a wanton doctor recklessly killing and paralyzing babies to profit from surgical fees. Not only have these allegations and this portrayal effectively ended Dr. Black's career, they have subjected him and his family to numerous violent threats. In one chilling instance, on June 12, 2015—shortly after Defendants' defamatory

articles and video reports began to air—Dr. Black received a telephone call telling him that he would be “butchered just like [his] patients.”

16. Dr. Black additionally brings defamation claims against two other CNN employees who directly contributed to and repeated the false and defamatory claims about him, thereby further damaging him and his reputation. Specifically, Dr. Black brings defamation claims against Dana Ford, a CNN employee who helped author and publish the August 17, 2015 article that repeated the CNN Defendants’ false and defamatory claim regarding the mortality rate of children on whom he operated, and against Anderson Cooper, a CNN employee and host of the CNN television program “Anderson Cooper 360°,” who upon information and belief caused the same false and defamatory allegation to be published to a nationwide and international audience through the Facebook account for his Anderson Cooper 360° program.

17. Dr. Black also brings defamation claims against Kelly Robinson. Defendant Robinson served as a key source for the CNN Defendants for their defamatory articles and video reports and has expressly admitted that she worked for CNN in conjunction with those articles and video reports.⁶ Defendant Robinson also made false and defamatory statements about Dr. Black to multiple persons; contacted numerous people, including Dr. Black’s colleagues, and encouraged them to speak with Elizabeth Cohen and CNN to aid in the false and defamatory articles and news reports; facilitated for Defendant Cohen at least one interview with a parent of a patient of Dr. Black’s; and accompanied at least one parent of a patient of Dr. Black’s to an interview conducted by the CNN Defendants.

⁶ See West Palm Beach Police Department Incident/Investigation Report, Case No. 20150005813 (Apr. 5, 2015) (attached hereto as Exhibit C).

18. In one particularly egregious instance in December 2014, Defendant Robinson contacted a nurse at St. Mary's to attempt to convince that nurse to speak with Elizabeth Cohen and CNN for their articles and news reports about St. Mary's, and, during the course of that conversation, Defendant Robinson stated that St. Mary's pediatric cardiac surgery program had an "enormous" death rate, that patients who had surgery performed by Dr. Black as part of that Program were "mangled," "butchered," and left in "horrendous" condition, and that the Program engaged in the improper "business of importing children from Trinidad and Haiti ... to perform surgeries." On another occasion, Defendant Robinson shouted at family members of one of Dr. Black's patients (the night before that patient's surgery) that Dr. Black is "killing people," "kills babies," and that if the patient "let Dr. Black operate on [her], he will kill her."⁷ On yet another occasion, Defendant Robinson improperly obtained a St. Mary's visitor's badge in order to gain access to St. Mary's, where she proceeded to the pediatric intensive care unit and before being told to leave screamed to all patients and staff within earshot that "Dr. Black is a baby-killing wacko!" and that they "better be watching CNN next week" before stating that she "works for CNN" and threatening that "security staff will be on television."⁸ Defendant Robinson's claims about Dr. Black are demonstrably false, and she made them knowing that they were false or with reckless disregard for their truth or falsity.

19. Dr. Black brings this action to vindicate his rights under civil law, to restore his reputation as a highly-regarded, preeminent pediatric cardiothoracic surgeon, and to establish Defendants' liability for the irreparable harm that they caused to his reputation by the false and

⁷ See Palm Beach County Sheriff's Office Offense Report, Case No. 15079112 (May 26, 2015) (attached hereto as Exhibit D).

⁸ See Ex. C, West Palm Beach Police Department Incident/Investigation Report, *supra* note 6.

defamatory statements they published about him. Dr. Black seeks an award of compensatory damages for the reputational and economic harm caused by Defendants' defamatory statements, and, given the willful and malicious nature of Defendants' conduct in knowingly making and publishing defamatory falsehoods about him and knowingly and maliciously using those false and defamatory statements to intentionally interfere with his future employment, Dr. Black also seeks an award of presumed damages in an amount to be determined at trial and will, at the appropriate time and based on appropriate evidence, seek an award of punitive damages.

PARTIES AND RELEVANT NON-PARTIES

20. Plaintiff Michael D. Black, MD, MBA is a Florida citizen residing in Palm Beach County, Florida. A medical doctor for nearly 30 years and surgeon for nearly 25 years, Dr. Black has devoted his career to helping some of society's sickest and most vulnerable children. He has previously served as the Chief of Cardiac Surgery at Stanford's Lucile Packard Children's Hospital, is a Fellow of The Royal College of Surgeons of Canada in both general and cardiac surgery and a Fellow of American College of Surgeons, and has been recognized throughout his career as one of North America's preeminent pediatric cardiothoracic surgeons, earning, among other accolades, six Best Doctors in America awards, a Computerworld Medal of Honor Achievement in Medicine Award, a Best Thoracic Surgeon award, and, most recently, a Heroes in Medicine award and a 2015 Top Doctors award.

21. Defendant Cable News Network, Inc. ("CNN") is a Delaware corporation with its headquarters in Atlanta, Georgia. CNN publishes CNN.com and operates the CNN television station. Defendant CNN published the defamatory articles and videos concerning Dr. Black and also published defamatory "tweets" and Facebook posts about Dr. Black.

22. Defendant Elizabeth Cohen ("Cohen") is a citizen of Georgia residing in Atlanta, Georgia. Defendant Cohen is an employee of CNN and is the Senior Medical Correspondent for

CNN's health, wellness, and medical unit, and is the author of the book "The Empowered Patient" and a column for CNN titled "Empowered Patient." Defendant Cohen authored and published the false and defamatory articles concerning Dr. Black, and published false and defamatory statements concerning Dr. Black in numerous videotaped and televised reports as well as in "tweets" to her "legions" of Twitter "followers" and in Facebook posts.

23. Defendant John Bonifield ("Bonifield") is a citizen of Georgia residing in Atlanta, Georgia. Defendant Bonifield is an employee of CNN and is a Supervising Producer for the CNN Medical Unit who works primarily with Elizabeth Cohen and also works with CNN's Chief Medical Correspondent, Dr. Sanjay Gupta. Defendant Bonifield co-authored and published some of the defamatory articles concerning Dr. Black. Upon information and belief, Defendant Bonifield also produced and published at least some of the defamatory video reports concerning Dr. Black.

24. Defendant Dana Ford ("Ford") is a citizen of Georgia residing in Atlanta, Georgia. Defendant Ford is an employee of CNN and is a writer and Newsdesk Editor for CNN Digital, a platform operated by CNN. Defendant Ford contributed to and published the defamatory August 17, 2015 Article concerning Dr. Black titled "CNN Report on Florida Hospital Leads to Heart Surgery Program Closure."

25. Defendant Anderson Cooper ("Cooper") is a citizen of New York residing in New York City, New York. Defendant Cooper is an employee of CNN and the host of the television program "Anderson Cooper 360°," which is broadcast on CNN's television station. On or about August 17, 2015, a false and defamatory video produced and published by Defendants CNN and Cohen, and, upon information and belief, Defendant Bonifield, was broadcast to a nationwide and international audience on Anderson Cooper 360°, in a segment in which Defendant Cooper also interviewed Defendant Cohen. In addition, on June 1, 2015, Defendant Cooper caused to be

published on the Anderson Cooper 360° Facebook account the defamatory statement that “[t]he mortality rate for babies having heart surgery at St. Mary’s Medical Center was three times the national average from 2011-2013,” along with a link to the June 1 Article and Video Report.

26. Defendant Kelly Robinson (“Robinson”) is a citizen of Florida and resident of Jupiter, Florida. Defendant Robinson made multiple false and defamatory statements about Dr. Black to his colleagues and patients and was a key source for the CNN Defendants’ defamatory June 1 Article who also purportedly claimed that there were “problems at [St. Mary’s] pediatric heart program” and that “an unusually large number of babies were having complications and many weren’t surviving” their operations. As she has further expressly admitted, Defendant Robinson also worked for CNN in conjunction with its defamatory articles and video reports, and she contributed to the CNN Defendants’ false and defamatory articles and assisted in “news-gathering” for publication of those articles.

27. Defendants CNN, Cohen, Bonifield, Ford, and Cooper are referred to herein collectively as the “CNN Defendants.” The CNN Defendants and Defendant Robinson are referred to herein collectively as “Defendants.”

28. Non-Party St. Mary’s Medical Center (“St. Mary’s”) is an award-winning acute care hospital in West Palm Beach, Florida, that is owned and operated by Tenet Florida. St. Mary’s has served the medical and healthcare needs of the greater West Palm Beach area for more than seventy years. In 2011, St. Mary’s recruited Dr. Black to build and develop a new pediatric cardiac surgery program (the “Program”) at the hospital and to serve as Medical Director of that Program. At all times relevant to this lawsuit, Dr. Black served as the Medical Director of St. Mary’s pediatric cardiac surgery program and the only surgeon performing pediatric cardiac surgery for the Program.

JURISDICTION AND VENUE

29. This Court has subject-matter jurisdiction over this suit under Fla. Const. art. V, §§ 5, 6, and Fla. Stat. § 26.012 because this suit is an action at law in which the matter in controversy exceeds the sum of \$15,000.

30. This Court has personal jurisdiction over the CNN Defendants under Fla. Stat. § 48.193 because the CNN Defendants committed tortious acts in the State of Florida by publishing defamatory statements in Florida about a citizen and resident of Florida, and because they caused injury to Dr. Black in Florida by publishing defamatory statements in articles and news reports that were accessible in and that were accessed in Florida and because those articles and news reports were consumed within Florida in the ordinary course of commerce, trade, or use. The CNN Defendants knew that St. Mary's Hospital is located in Florida and that Dr. Black is a Florida resident at the time they published their defamatory statements. Moreover, Defendants Cohen and Bonifield called and emailed Florida residents and visited Florida to conduct interviews of sources. This Court also has personal jurisdiction over Defendant CNN under Fla. Stat. § 48.193 because Defendant CNN operates, conducts, engages in, or carries on a business or business venture in Florida and because Defendant CNN has an office in Florida.

31. Exercising personal jurisdiction over the CNN Defendants also comports with the U.S. and Florida Constitutions' Due Process Clauses because the CNN Defendants have published defamatory statements about a Florida resident—and thereby intentionally and purposefully directed tortious conduct at a Florida resident—because the brunt of the harm from those defamatory statements was felt in Florida; because the CNN Defendants have, for the reasons stated in the previous paragraph, had sufficient minimum contacts with the State of Florida such that the maintenance of this suit in Florida does not offend traditional notions of fair play and substantial justice; and because the CNN Defendants have, for the reasons stated in the

prior paragraph, purposefully availed themselves of the privileges of conducting activities in the State of Florida.

32. This Court has personal jurisdiction over Defendant Robinson under Fla. Stat. § 48.193 because Defendant Robinson committed tortious acts in the State of Florida by publishing defamatory statements in Florida about a citizen and resident of Florida. This Court also has personal jurisdiction over Defendant Robinson because she is resident and citizen of the State of Florida. *See Haueter-Herranz v. Romero*, 975 So. 2d 511, 516 (Fla. 2d DCA 2008); *Patten v. Mokher*, 184 So. 29, 30 (Fla. 1938).

33. Venue is proper in Palm Beach County pursuant to Fla. Stat. § 47.011, Fla. Stat. § 47.041, and Fla. Stat. § 47.051, because Plaintiff's causes of action accrued in Palm Beach County.

FACTUAL ALLEGATIONS

Elizabeth Cohen Develops An Agenda-Driven Journalism Career

34. Defendant Cohen, now CNN's Senior Medical Correspondent, joined CNN in 1991, and for many years worked as a health news reporter. Cohen earned a Bachelor's degree from Columbia University and a Master of Public Health degree from Boston University, where she developed an advanced knowledge of statistics, having explained in her own words that "I know how to evaluate studies from a statistical point of view."⁹

35. While at CNN, it became Cohen's "mission" to "empower" medical patients. To that end, in 2003 Ms. Cohen developed what she considers her "Empowered Patient" "brand." She began to write and speak extensively about, among other things, her beliefs about "how

⁹ "Faces of Public Health: A Q&A with Elizabeth Cohen, Senior Medical Correspondent, CNN," *The Robert Wood Johnson Foundation* (May 31, 2011), <http://www.rwjf.org/en/culture-of-health/2011/05/faces-of-public-health-a-qa-with-elizabeth-cohen-senior-medical-correspondent-cnn.html>.

broken our [healthcare] system really is,” about how doctors routinely make mistakes, and about how patients need to “fight” to get the proper care from doctors and hospitals.¹⁰ She started and has maintained a column on CNN.com titled “The Empowered Patient” and has spoken extensively on CNN television programming on the subject of “patient empowerment.”

36. To that end, Cohen authored a book titled “The Empowered Patient,” which has been billed as a “rallying cry.” In that book, Cohen expanded upon her beliefs that doctors are unable or unwilling to provide proper care to their patients, that there are “important” and “vital” “things your doctor doesn’t tell you,” that “physicians play favorites,” that hospitals are “truly dangerous” places and “the ‘wrong’ hospital can kill you,” and that the medical system is “truly broken.”¹¹ To justify and support these beliefs, Cohen offers various purportedly true anecdotes and vignettes: for example, a nurse hiding in an exam room and whispering to two patients walking by “Psst ... [c]ome in here,” before telling the patients something the doctor did not want them to know, “like something out of a spy novel.”¹² Building upon those beliefs and playing off those vignettes, Cohen positions herself as a patient advocate, repeatedly writing that “[y]our doctor won’t alert you to these dangers [facing patients], but I will,” in order to keep the reader “from becoming a victim” of a broken healthcare system.¹³ According to Cohen, her “patient

¹⁰ See, e.g., Elizabeth Cohen, “Why I Write ‘Empowered Patient,’” *CNN* (Aug. 5, 2010), <http://www.cnn.com/2010/HEALTH/08/05/shir.baby.empowered.patient/index.html>.

¹¹ See, e.g., Elizabeth Cohen, *The Empowered Patient* xii, 23, 150 (Ballantine 2010); Elizabeth Cohen, “Why I Write ‘Empowered Patient,’” *CNN* (Aug. 5, 2010), <http://www.cnn.com/2010/HEALTH/08/05/shir.baby.empowered.patient/index.html>.

¹² Elizabeth Cohen, *The Empowered Patient*, *supra* note 11, at 32.

¹³ *Id.* at xii, xiv.

heroes”—people she wants all patients to emulate—are “people who knew more than their doctors did and bucked the system in order to get the care they needed.”¹⁴

37. Cohen has likewise built her brand—and positioned herself as a patient advocate who, she claims, tells people what doctors will not—through numerous articles she has written for CNN about hospitals and doctors failing to provide adequate care, doctors and drug companies putting profits over patients, and the need for patients to buck the system to obtain proper care.

38. Cohen’s 2012 article titled “10 Shocking Medical Mistakes” is emblematic of Cohen’s indictment of the medical profession. Cohen begins the article by writing that “[w]hen you’re a patient, you trust you’re in good hands,” before warning that that trust is misplaced, quoting a doctor’s opinion that “[m]istakes are happening every day in every hospital in the country,” and providing ten anecdotes of such mistakes and offering “ways to not become a victim,” before inviting readers to share their own stories of medical errors.¹⁵ Cohen has similarly written that doctors discriminate against patients,¹⁶ and denounced others in the medical industry, including drug companies, who she has blamed for intentionally creating drug

¹⁴ *Id.* at xiii.

¹⁵ Elizabeth Cohen & John Bonifield, “10 Shocking Medical Mistakes,” CNN (Nov. 5, 2012), <http://www.cnn.com/2012/11/05/health/medical-mistakes-nov/index.html>.

¹⁶ Elizabeth Cohen, “Disabled Baby Denied Heart Transplant,” CNN (Nov. 30, 2013), <http://www.cnn.com/2013/11/30/health/disabled-transplants/index.html>.

shortages for profit¹⁷ and for failing to provide experimental drugs to patients, notwithstanding the legal regime governing the use of such drugs.¹⁸

39. Cohen has also developed this theme through numerous articles profiling people who, according to her, had to diagnose themselves or go against their doctor in order to receive the care they needed. For example, Cohen has written about a woman who, she claims, had to “diagnose[] her own cancer” and nearly “received the wrong treatment” that “most likely would have [caused her to] die[] quite quickly.”¹⁹ Cohen has similarly written about other patients who “had to solve [their] own medical problem”²⁰ and patients whose doctor, according to Cohen, “didn’t do what was best for [their] health; he did what was best for his bank account” by prescribing treatments not to help patients, but to personally profit through relationships with drug and medical device companies.²¹

40. More recently, Cohen capitalized on public fears during the 2014 Ebola outbreak to highlight one of the major themes in her writing: that hospitals routinely make critical mistakes. In an article titled “Reporter Notebook: Why I’m Not Surprised Hospital Missed Ebola,” Cohen wrote about an emergency room decision not to admit to the hospital a man who

¹⁷ Elizabeth Cohen, “Drug shortages for Child Cancer Patients,” CNN (Feb 15, 2012), <http://www.cnn.com/videos/health/2012/02/15/nr-cohen-fda-works-to-supply-cancer-drug.cnn> (blaming drug companies for putting profits over patients and causing cancer drug shortages).

¹⁸ Elizabeth Cohen, “Dying Patients Denied Drugs,” CNN (Apr. 6, 2014), <http://www.cnn.com/2014/04/05/health/cohen-compassionate-use/index.html> (contending that drug companies deny patients potentially life-saving drugs).

¹⁹ Elizabeth Cohen, “The Death of a Friend—And an Empowered Patient,” CNN (Sept. 8, 2011), <http://www.cnn.com/2011/09/08/health/marci-smith-death-ep/index.html>.

²⁰ Elizabeth Cohen, “Teen Diagnoses Her Own Disease in Science Class,” CNN (June 11, 2009), <http://www.cnn.com/2009/HEALTH/06/11/teen.self.diagnosis/index.html>.

²¹ Elizabeth Cohen, “Don’t Become a Victim of Medical Marketing,” CNN (Aug. 21, 2008), [tp://www.cnn.com/2008/HEALTH/08/21/ep.conflicts/index.html](http://www.cnn.com/2008/HEALTH/08/21/ep.conflicts/index.html).

had visited Liberia and subsequently had a fever.²² In an attempt to portray this not as an isolated occurrence but as part of a pattern of hospital ineptitude, Cohen wrote: “Reporters looked at each other and gasped in surprise. How could they have let [the man] go home? Not me. I thought, ‘It’s happened again.’ And again, and again and again.”²³

41. Cohen has marshaled her beliefs and these anecdotes to develop her “Empowered Patient” brand. That brand has been very lucrative for her. In addition to gaining greater exposure for her reporting and earning significant revenue from the sales of her book, Cohen has parlayed her brand into a lucrative motivational speaking business, commanding speaking fees as high as \$75,000.²⁴

42. Neither Cohen nor her children have ever been patients of Dr. Black’s or the St. Mary’s Program, and Cohen does not know Dr. Black professionally or personally.

Dr. Black Builds An Exemplary Career And Becomes An Internationally Renowned Pediatric Cardiothoracic Surgeon

43. Dr. Black is one of North America’s preeminent pediatric cardiothoracic surgeons.

44. Dr. Black earned his Bachelor of Science degree in Pharmacology and Physiology from the University of Western Ontario, where he received a scholarship for academic excellence and graduated with honors in just three years in 1982. Dr. Black then enrolled at the

²² Elizabeth Cohen, “Reporter Notebook: Why I’m Not Surprised Hospital Missed Ebola,” CNN (Oct. 17, 2014), <http://www.cnn.com/2014/10/17/health/reporter-notebook-ebola-hospital>.

²³ *Id.*

²⁴ See, e.g., Key Speakers: Elizabeth Cohen, <http://www.keyspeakers.com/bio.php?3121-elizabeth-cohen> (last visited Feb. 2, 2016) (noting that Ms. Cohen commands speaking fees of \$50,000-\$75,000 plus expenses); Premier Speakers Bureau: Elizabeth Cohen, http://premierespeakers.com/elizabeth_cohen (last visited Feb. 2, 2016); Leading Authorities: Elizabeth Cohen, <http://www.leadingauthorities.com/speakers/elizabeth-cohen.html> (last visited Feb. 2, 2016); American Program Bureau: Elizabeth Cohen, <http://www.apbspeakers.com/speaker/elizabeth-cohen> (last visited Feb. 2, 2016).

University of Toronto Medical School, where he earned numerous awards, including the Order of the British Empire Scholarship for Academic Excellence, and graduated in 1986.

45. Following his graduation from medical school, Dr. Black performed a year-long surgical internship at the University of Toronto before moving to Ottawa, Ontario, where he undertook a six-year combined surgical residency at the University of Ottawa—and attained the position of Chief Administrative Surgical Resident—followed by a specialized cardiovascular and thoracic surgery residency. Upon the completion of his cardiovascular and thoracic surgery residency, Dr. Black performed a year-long pediatric cardiovascular surgical fellowship at The Hospital for Sick Children in Toronto, the world’s second-largest hospital-based pediatric research facility. While performing that fellowship, in recognition of his outstanding achievements, leadership, research, service, and academic abilities, Dr. Black received numerous awards, including the prestigious R. Samuel McLaughlin Research and Education Fellowship Award in Medicine, which is awarded to one (or at most two) persons each year, as well as a humanitarian award in “special recognition of his compassion and humanitarianism combined with clinical excellence demonstrated during training.”

46. Following the completion of his pediatric cardiovascular surgical fellowship at The Hospital for Sick Children, Dr. Black elected to pursue yet further pediatric cardiac surgical training and completed an additional pediatric cardiac surgical fellowship at the University of California San Francisco, where he also served as an Instructor of Pediatric Cardiac Surgery and received a teaching award for his efforts.

47. After finishing his second pediatric cardiac surgical fellowship, Dr. Black returned to the University of Toronto, where he became an Assistant Professor in the Department of Surgery. While there, Dr. Black maintained an active surgical practice focused on neonate and infant patients, even inventing and pioneering new techniques for minimally-invasive

surgery on neonates and infants designed to improve surgical success rates and reduce patient recovery times, about which Dr. Black published extensively. Dr. Black's reputation as a well-trained, competent, compassionate, and skilled pediatric cardiothoracic surgeon grew, and he quickly became the hospital's most sought-after pediatric cardiothoracic surgeon, performing close to one thousand successful operations and multiple hundreds of successful complex pediatric cardiac surgeries.

48. After three years at the University of Toronto, Dr. Black received an offer from Stanford University to become the Chief of Cardiac Surgery at Stanford's Lucile Packard Children's Hospital. Dr. Black accepted the offer, and in 1999, he moved back to the United States to assume that position. Dr. Black's tenure as Chief of Cardiac Surgery at Stanford's Lucile Packard Children's Hospital was extremely successful. When Dr. Black arrived, the neonatal cardiac surgical program at Lucile Packard was in moratorium, but in his first few years there, he was able to create a vibrant and successful pediatric and adult congenital heart program. While at Lucile Packard, Dr. Black also served as an Associate Professor in the Departments of Surgery at Stanford University and the University of California at San Francisco, devoting considerable efforts to not only helping his own patients, but untold future patients by training the next generation of cardiac surgeons at those elite institutions. Beginning only a few months after he became Chief of Cardiac Surgery at Lucile Packard, Dr. Black concomitantly served as a Congenital Pediatric Cardiac Surgeon at the nearby California Pacific Medical Center.

49. Having successfully developed the neonatal cardiac program at Stanford's Lucile Packard Children's Hospital and seeking a new challenge where he could help more people, Dr. Black left Lucile Packard in 2003 to become the Chief of the Division of Pediatric Cardiac Surgery and the Surgical Director of the Pediatric and Adult Congenital Heart Program at the

California Pacific Medical Center. During his time in Canada, at Lucile Packard, and at California Pacific, Dr. Black successfully operated on thousands of neonates' and infants' hearts.

50. In addition to maintaining a full-time operating schedule at California Pacific Medical Center, from 2005-2008 Dr. Black also attended the University of California, Berkeley Haas School of Business, where he became a Turner Fellow in Entrepreneurship, graduated as valedictorian, and received his Master of Business Administration degree in 2008. Wanting to make a difference in the lives of as many cardiac patients as he could, and not content simply to do so one patient at a time, Dr. Black almost immediately put his business education and degree to use, developing a variety of minimally-invasive surgical products that have helped countless sick pediatric and adult patients needing cardiac surgery throughout the United States and across the world. Dr. Black's efforts were incredibly successful; he has invented products to assist countless surgeons in treating their patients, and today holds well over a dozen patents on those products.

51. Throughout his career, Dr. Black has also pioneered extensive research into cardiac and pediatric cardiac treatments and procedures and, to that end, has published prolifically. Dr. Black has authored, co-authored, or collaborated on 75 papers and over 60 abstracts in peer-reviewed journals; authored and edited multiple books and chapters in leading medical textbooks; made over twenty presentations at pediatric, cardiac, cardiothoracic, and surgical conferences; read 40 peer-reviewed papers at pediatric, cardiac, cardiothoracic, surgical, and scientific meetings; published numerous peer-reviewed medical illustrations; and received numerous grants to undertake peer-reviewed research projects focused on pediatric cardiac surgery. Dr. Black also is and has been a reviewer for numerous peer-reviewed medical journals, including the Journal of Thoracic and Cardiovascular Surgery, the Journal of Cardiac Surgery,

the Journal of American College of Cardiology, and Congenital Heart Disease, and is a member of many medical, cardiac, and pediatric organizations.

52. Dr. Black is a Fellow of The Royal College of Surgeons of Canada in both general and cardiac surgery, a Fellow of American College of Surgeons, a Fellow of the American College of Cardiology, and a Diplomat of the American Board of Surgery. He also served on the Medical Advisory Panel of Saving Little Hearts, a non-profit organization dedicated to helping children with congenital heart defects and their families; has served on the Boards of Directors of the Sutter Health Care West Bay Foundation, the Physician's Foundation at the California Pacific Medical Center, and the Holocaust Center of Northern California; has been an officer of the Bay Area Society of Thoracic Surgeons; and has served as a reviewer for National Institutes of Health grant applications.

53. Dr. Black has also been the recipient of numerous honors and awards throughout his career, including six Best Doctors in America awards, a Computerworld Medal of Honor Achievement in Medicine Award, a Best Thoracic Surgeon award, and, most recently, a Heroes in Medicine award for Palm Beach County, Florida award and a 2015 Top Doctors award.

54. Throughout his career, Dr. Black has also extensively volunteered his time operating in hospitals in underserved communities, not only in the United States but across the world, including in Brazil, China, and Taiwan. Dr. Black has on numerous occasions seen patients who are unable to pay for care for free, has driven patients home when they have lacked transportation, and has even paid for his patients' food and transportation when they have been unable to afford it. Dr. Black has served on the boards of charitable and medical organizations, and while at St. Mary's even founded a non-profit organization—the MyLittleHeart Foundation—dedicated to raising funds and paying for children in need of life-saving heart surgeries to have those procedures. Dr. Black has volunteered his time and efforts to serve on

the Health Council of Southeast Florida and The Children's Services Council of Palm Beach County and Fetal and Infant Mortality Review (FIMR) in Palm Beach County, and has been recognized for his volunteer service in Palm Beach County. As a testament to his dedication to his patients, Dr. Black even left his daughter's wedding reception when one of his patients needed urgent care.

55. By all accounts, before the CNN Defendants published their defamatory article and broadcast video report, Dr. Black was a highly respected and decorated pediatric cardiothoracic surgeon with impeccable professional and personal reputations.

**Dr. Black Is Recruited To Launch And Successfully Develops
A Pediatric Cardiac Surgical Program At St. Mary's Medical Center**

56. Early in 2011, while Dr. Black was the Chief of the Division of Pediatric Cardiac Surgery and the Surgical Director of the Pediatric and Adult Congenital Heart Program at the California Pacific Medical Center, he was approached by a recruiter working on behalf of St. Mary's Medical Center in West Palm Beach, Florida and asked if he would be willing to visit St. Mary's and consider starting a pediatric cardiac surgery program there.

57. Over the following months, Dr. Black traveled to West Palm Beach regularly, performing significant due diligence by meeting with officials at St. Mary's and researching the need for a pediatric cardiac surgery program in Palm Beach County, Florida. Based on publicly available information and his meetings with St. Mary's officials, Dr. Black realized that the need for the program, and its potential to help countless patients and their families, was great. At that time, infants and children who needed life-saving cardiac surgery in Palm Beach County—one of the largest counties in Florida with a population of over 1.3 million—had to travel many miles away from their home and their doctors (to Miami, Hollywood, Tampa, or Orlando) for treatment. Dr. Black saw an opportunity to make a significant difference in the community, especially considering that, nationally, heart problems are present in 1% of births, Palm Beach

County had 14,500 live births each year, and nearly 10% of the county's population was below the poverty line. Thus, after months of research and assurances from St. Mary's that it would acquire all necessary equipment and make all infrastructure improvements necessary for a safe, successful, and effective pediatric cardiac surgical program, Dr. Black accepted an offer from St. Mary's and became the Medical Director of the pediatric cardiac surgery program at the St. Mary's Medical Center at the Palm Beach Children's Hospital. As one lawmaker noted in a letter to Dr. Black thanking him when he came to St. Mary's in September 2011, Dr. Black's agreement to develop and launch a pediatric cardiac surgery program at St. Mary's "truly [was] a milestone for Palm Beach County," which "was in dire need of its own pediatric heart program," as that program "w[ould] help to reduce an already stressful situation for families who will no longer have to travel great distances to get quality care and service."

58. Upon arriving at St. Mary's, Dr. Black took great pains to create and develop a sound pediatric cardiac surgery program at the hospital. To that end, Dr. Black insisted that the Program begin a methodical and graduated philosophy of slowly increasing volume in concert with the complexity of the operations as classified by the STS. During that time he conducted numerous classes, training the doctors, nurses, and hospital personnel working in the intensive care units, emergency room, operating rooms, and admitting departments, as well as other personnel who would be involved in pediatric cardiac surgeries—including ancillary medical staff, respiratory technologists, cardiopulmonary perfusion staff, laboratory staff, pharmacy staff, and radiology staff—on the appropriate techniques, procedures, and resources to use and follow during procedures once the Program began accepting patients.

59. Under Dr. Black's leadership, St. Mary's pediatric cardiac surgery program accepted its first patient in September 2011, and Dr. Black, as a responsible and prudent surgeon, slowly began to increase the volume of patients and procedures performed.

60. Dr. Black's efforts to develop, launch, and build the Program at St. Mary's were successful by objective measurements from the nationally-renowned Society of Thoracic Surgeons ("STS").

61. Every death in every surgical program is tragic. Unfortunately, when performing complicated cardiac surgical procedures, some deaths are inevitable, even when a doctor meets or exceeds the appropriate standard of care. As such, the STS rates all pediatric cardiac surgery programs nationwide on a three-star scale "based on the overall risk-adjusted observed-to-expected (O/E) operative mortality ratio for all patients undergoing pediatric and/or congenital cardiac surgery."²⁵ Programs receiving one star have a risk-adjusted mortality rate that is higher than expected based on the surgeries that the program performed, programs receiving two stars have a risk-adjusted mortality rate that is equal to that expected based on the surgeries that the program performed, and programs receiving three stars have a risk-adjusted mortality rate that is lower than expected based on the surgeries that the program performed. Dr. Black's and the Program's results from 2011-2014 earned a two-star rating from the STS—meaning that Dr. Black's and the Program's mortality rate was statistically no different from the national average for other pediatric cardiac surgery programs in the United States—along with all other such programs in the State of Florida and 78 of the other 95 programs receiving STS star ratings nationwide. During the same time-frame only 6 programs received three-star ratings while 11 earned a one-star ratings; 20 other programs did not receive a star rating at all.

²⁵ Society of Thoracic Surgeons, "Explanation of STS CHSD Star Ratings," <http://www.sts.org/quality-research-patient-safety/sts-public-reporting-online/explanation-sts-chsd-star-ratings> (last visited Feb. 2, 2016).

Other Florida Cardiac Surgeons Are Unhappy About Dr. Black's Success At St. Mary's

62. Dr. Black's efforts at St. Mary's were successful by leading objective measurements and St. Mary's received overwhelming support from local health officials when it sought permission from the State of Florida to launch its pediatric cardiac surgical program. But not everyone in the Florida medical community was happy about it.

63. Rather, many doctors at different Florida hospitals with pediatric cardiac surgery programs—such as Nicklaus (Miami) Children's Hospital, Joe DiMaggio Children's Hospital in Hollywood, Florida, and Arnold Palmer Hospital for Children in Orlando—opposed St. Mary's efforts to launch its pediatric cardiac surgery program, believing that the Program would “steal” patients from those doctors and hospitals.

64. Dr. Black learned exactly how hostile these other doctors at other hospitals were to him when, shortly after arriving at St. Mary's, he received a telephone call from Dr. Redmond Burke, the founder of the Congenital Heart Institute at Nicklaus (Miami) Children's Hospital. During that call, Dr. Burke berated Dr. Black for coming to Florida, telling him to “Go back to California!” and threatening that “You think you know competition in California; you haven't seen anything yet!”

65. As a result of the hostility toward Dr. Black and the newly founded Program, many established cardiology practices refused to refer patients to Dr. Black and St. Mary's, and when they did, they referred primarily the most delicate and “undesirable” patients to him. Dr. Black, however, never turned down a patient needing care.

Defendant Robinson Starts Her Own Crusade Against Dr. Black

66. Shortly after Dr. Black received the threatening call from Dr. Burke, Dr. Burke's close friend and ardent supporter, Defendant Kelly Robinson—who served as a key source for

the CNN Defendants for their defamatory June 1 article and their purported “investigation” into Dr. Black—began her own efforts to undermine Dr. Black and St. Mary’s.

67. As profiled in media reports following the CNN Defendants’ June 1 article and video report, Robinson is a “heart mom”—a mother whose young son suffers from heart disease and had heart surgery performed by Dr. Redmond Burke at Nicklaus (Miami) Children’s Hospital. For several years, Robinson has been a big supporter of Nicklaus (Miami) Children’s Hospital and has been an active donor to, fundraiser for, and supporter of that hospital and its chief pediatric cardiac surgeon, Dr. Redmond Burke—the same surgeon who expressed hostility toward Dr. Black and St. Mary’s. Indeed, Robinson has been such an ardent supporter of Dr. Burke’s that she has been featured prominently in a variety of Nicklaus (Miami) Children’s Hospital promotional materials, pledging her love and support to Dr. Burke:

MCH Inaugural Diamond Society Recognition Event

Miami Children’s Hospital Foundation Honors its Donors



\$500 - \$999
Kelly and Reese Robinson

MIAMI CHILDREN’S HOSPITAL IS RISING TO MEETING WORLD-CLASS CARE

FOUNDATION FOCUS

News for Foundation Friends and Family Spring 2013

GRATEFUL FAMILY GIVES BACK.

James was a seemingly healthy infant, but at only 4 months old, he began experiencing difficulty breathing. James’s parents Kelly and Reese Robinson, who reside in Jupiter, Florida, searched the nation for a top children’s hospital and selected Miami Children’s Hospital (MCH) to care for their son. After James underwent a series of tests, they heard the words no parents want to hear, “your child needs heart surgery.” James’s aorta, the largest artery in the body, was constricted and it was limiting blood flow to his body.



Four days later, Dr. Redmond Burke and the nationally-ranked team at MCH performed the surgery. James recovered beautifully in the Hospital’s dedicated Cardiac Intensive Care Unit (CICU) and enjoys visiting with all his fellow patients during his follow-up care. The Robinsons give back by spending time with families in the CICU family room each month, delivering dinner and speaking with families about their experiences. They collected more than 100 toys for the patients in the CICU this holiday season. They also are very grateful that MCH has opened two outpatient centers in Palm Beach County with the Nicklaus Children’s Health Care Foundation so that they can turn to the same level of care closer to home.

“Our giving to MCH is a privilege,” said Kelly. We give out of gratitude for the care of our children but also to honor all the dedicated staff that do their jobs with excellence for each and every child and family who enters the doors.”



The Robinson family poses at a playground

For more information about how you can make a difference in the life of a child, please visit mchf.org/donate.



68. Robinson is not a doctor or nurse, has no medical training, and has no clinical experience.

69. Robinson's son was never a patient of Dr. Black's or the St. Mary's Program, and Robinson does not know Dr. Black professionally or personally.

70. Nevertheless, beginning in 2012, concomitantly with her efforts to support Nicklaus (Miami) Children's Hospital, Robinson launched a sustained effort to malign and oppose the success of Dr. Black and the St. Mary's Program.

71. Robinson's efforts began in earnest in October 2012, when, as detailed in the CNN Defendants' June 1, 2015 article and video report, she approached the parents of Layla McCarthy, a patient of Dr. Black's, inside St. Mary's and claimed to them that hospital "staff had whispered to her about problems at the hospital's pediatric heart surgery program," and further claimed that "an unusually large number of babies were having complications and many weren't surviving," before warning the McCarthys that "[y]ou need to get her [Layla] out of here." Robinson's statements are false and defamatory. As explained above, there was no statistically

significant difference between the mortality rate of St. Mary's pediatric cardiac surgery program and the STS national average mortality rate.

72. On October 21, 2012, Robinson emailed Dr. Black directly "beg[ging]" him to "stop the [P]rogram," and at the same time acknowledged "the risks inherent in [his] work."

73. Dr. Black denied all of Robinson's claims regarding Layla McCarthy and the rest of her false and defamatory accusations. Nonetheless, Robinson redoubled her efforts against Dr. Black and St. Mary's. In December 2014, Robinson called multiple nurses who worked in the St. Mary's Pediatric Intensive Care Unit and contacted parents of pediatric cardiac surgical patients, making false and defamatory comments regarding Dr. Black.

74. In one instance, Robinson made a 36-minute call made to a PICU nurse's private cell phone late in the evening and defamed Dr. Black by stating to that nurse—one of Dr. Black's colleagues—that St. Mary's pediatric cardiac surgery program had an "enormous" death rate and that patients who had surgery performed by Dr. Black as part of that Program were "mangled," "butchered," and left in "horrendous" condition. Robinson further alleged that Dr. Black engaged in the improper "business of importing children from Trinidad and Haiti ... to perform surgeries" on them. Those statements are patently and demonstrably false. There was no statistically significant difference between St. Mary's its pediatric heart surgery program's mortality rate and the STS national average mortality rate. Dr. Black never "mangled" or "butchered" his patients or left them in "horrendous" condition. Moreover, Dr. Black never "imported children from Trinidad and Haiti"—or from any other country—to perform surgeries.

75. During the same conversation, Robinson pressured the nurse to contact and speak with Elizabeth Cohen and CNN because they were working on "a story involving Dr. Black." Robinson suggested to the nurse that if she did not contact Cohen and CNN, the Program's nurses would be "shamed" on "national television, global television" along with Dr. Black.

76. In April 2015, Robinson brought her efforts to defame Dr. Black directly to parents and families of patients in St. Mary's Medical Center. On April 5, 2015, Robinson improperly obtained a St. Mary's Visitor's Badge (pictured below) after falsely telling a security guard that she was there to visit a patient. After obtaining the badge under that false pretense, Robinson proceeded to the pediatric intensive care unit, where she was confronted by a nurse and told that she was not an approved visitor. Security was called after the family she was purportedly visiting informed hospital staff that they did not know Robinson. Before being escorted out of the hospital by security personnel, Robinson screamed to everyone within earshot, including parents of patients and St. Mary's staff, that "Dr. Black is a baby-killing wacko!" and that they "better be watching CNN next week" before stating that she "works for CNN" and that "security staff will be on television."²⁶



***St. Mary's Medical Center visitor's badge
improperly obtained by Defendant Robinson***

²⁶ See Ex. C, West Palm Beach Police Department Incident/Investigation Report, *supra* note 6.

77. Having been removed from St. Mary's, Robinson continued her efforts to defame and disparage Dr. Black outside of the hospital. On or about May 26, 2015 at approximately 8:00 pm, Robinson went to the home of the father of one of Dr. Black's patients, a young woman scheduled for surgery with Dr. Black the next day. At that home, Robinson confronted the patient's brother (and other family members), made clear to him that she knew the date, doctor, and nature of the procedure that his sister was having, and screamed hysterically at them that Dr. Black is "killing people," that Dr. Black is "someone who kills babies," that Dr. Black "has many deaths on his hands," and that if the patient "let Dr. Black operate on [her], he will kill her."

78. The patient and her family were severely affected and traumatized by Robinson's statements and the patient's brother filed a police report.²⁷

79. Robinson's statements about Dr. Black are false and defamatory. Dr. Black is in the business of saving lives, and has never "kill[ed] people," is not "someone who kills babies," does not "ha[ve] many deaths on his hands," and would never "kill" any of his patients.

80. Notwithstanding Robinson's statements, the patient went forward with her scheduled surgery with Dr. Black, which was a complete success.

81. On yet another occasion, Robinson went to the office of her concierge pediatrician—a past president and member of the Palm Beach Medical Society—and again screamed at patients and their families, ranting about Dr. Black and yelling false and defamatory statements that Dr. Black "kills babies," "doesn't know what he's doing," and "shouldn't be practicing medicine."

²⁷ See Ex. D, Palm Beach County Sheriff's Office Offense Report, *supra* note 7.

82. Robinson made her statements with actual malice—that is, with actual knowledge of their falsity or, at minimum, reckless disregard for their truth or falsity. Robinson was motivated to defame and disparage Dr. Black in an effort to harm him and the St. Mary’s Program and to direct more patients to and support the pediatric cardiac surgery program at Nicklaus (Miami) Children’s Hospital, and, specifically, to her child’s surgeon and her personal friend, Dr. Redmond Burke. Upon information and belief, Robinson knew that the St. Mary’s Program was a two-star program as recognized by the STS and that Dr. Black was an accomplished, well-trained, and talented pediatric cardiothoracic surgeon—who she believed, far from butchering children, was creating competition for surgical patients for her close personal friend, Dr. Redmond Burke.

**The CNN Defendants Work With Defendant Robinson To Craft A
False And Defamatory Story About Dr. Black And
St. Mary’s Pediatric Cardiac Surgery Program**

83. As part of their effort to manufacture a false narrative about Dr. Black as an incompetent, dishonest, and inexperienced doctor leading a surgical program in crisis and recklessly operating on young children to profit at the expense of children’s lives, the CNN Defendants intentionally sought out biased sources that they knew would speak poorly of Dr. Black and St. Mary’s and consciously avoided sources that would provide positive information about them—and, when they received positive information about Dr. Black and St. Mary’s, they intentionally disregarded it and chose not to include it in their reporting.

84. To that end, the CNN Defendants relied on Robinson as a source of information about Dr. Black and St. Mary’s for their series of articles, broadcasts, and video reports about Dr. Black and the St. Mary’s Program. The CNN Defendants’ reliance on Robinson was patently unreasonable. Upon information and belief, the CNN Defendants knew that Robinson is not a doctor, is not a nurse, and has no medical training or clinical experience. Upon information

and belief, the CNN Defendants knew that neither Robinson nor her son were patients of Dr. Black's.

85. Upon information and belief, CNN employed Robinson to attempt to garner additional negative information about Dr. Black from his patients and from others in the community. Indeed, Robinson admitted that she “work[ed] for CNN” with regard to CNN’s “investigation” of Dr. Black and St. Mary’s when she obtained a St. Mary’s visitor’s badge under false pretenses.²⁸ Furthermore, Robinson served as a key liaison for the CNN Defendants and their sources, attending the CNN Defendants’ interviews of family members of patients who would be profiled in CNN’s defamatory articles, broadcasts, and video reports, including Angie Erckert (Loudon) (mother of Landon Summerford).

86. The CNN Defendants consciously and recklessly relied on Robinson even though they know that she is and was strongly biased against Dr. Black and St. Mary’s and is not and was not a trustworthy, reputable, or reliable source.

87. Upon information and belief, the CNN Defendants knew that Robinson is and was a close personal friend of Dr. Redmond Burke and that she has a vested interest in harming Dr. Black’s career.

88. Upon information and belief, the CNN Defendants knew that Robinson had defamed and disparaged Dr. Black to St. Mary’s staff and patients in an erratic and wanton manner thereby creating significant red flags as to Robinson’s trustworthiness as a source for truthful and reliable information. Indeed, Robinson’s actions and behavior toward Dr. Black led the CNN Defendants to develop a subjective doubt about Robinson’s credibility as a reliable source. Nevertheless, the CNN Defendants knowingly and intentionally relied on this biased

²⁸ See Ex. C, West Palm Beach Police Department Incident/Investigation Report, *supra* note 6.

source—and they did so without disclosing to their readers that Robinson was a source for information and without disclosing Robinson’s clear bias.

**The CNN Defendants Intentionally Ignore Information, Provided By St. Mary’s
Before Their Articles And Video Reports Were Published,
That Contradicts Their Preconceived Story About Dr. Black and St. Mary’s**

89. As part of their effort to paint Dr. Black and St. Mary’s pediatric cardiac surgery program in the most negative light possible, the CNN Defendants intentionally ignored and disregarded numerous substantive communications from St. Mary’s and Dr. Black, that provided truthful information about the Program, because it contradicted their preconceived narrative.

90. On January 26, 2015, the CNN Defendants reached out to St. Mary’s via email to inform it that they were working on a story about St. Mary’s pediatric cardiac surgery program and its mortality rate and to seek comment for the story.

91. The next day, January 27, 2015, St. Mary’s, through a spokeswoman, responded to the CNN Defendants, explaining in an email that St. Mary’s would like to provide information for the CNN Defendants’ story, and requesting the context and specifics of the planned story and questions that the CNN Defendants would like answered for it. In a second email that day, St. Mary’s offered to introduce the CNN Defendants to patients of Dr. Black’s and the Program. The CNN Defendants, however, never took St. Mary’s up on that offer.

92. On February 17, 2015, John Bonifield sent an email to St. Mary’s stating that CNN “calculate[s] that the [St. Mary’s] [P]rogram’s mortality rate during this time period [2011-2013] was at least 12.5%,” and “[f]rom January 2010 – December 2013, the average operative mortality rate for the pediatric heart surgery programs nationwide was 3.51%, according to the Society of Thoracic Surgeons.” The CNN Defendants then asked for comment on those statistics. In that email, the CNN Defendants further acknowledged that according to a financial document filed with the State of Florida, “the year two incremental operating profit for

St. Mary's pediatric open heart surgery program was projected to be \$876,752," and asked for comment regarding those profit figures for the Program.

93. On February 27, 2015, the then-CEO of St. Mary's Medical Center, David Carbone, responded in a detailed letter telling the CNN Defendants, among other things, that their claimed mortality rate for Dr. Black and the St. Mary's Program was incorrect and based upon incorrect data. Mr. Carbone informed the CNN Defendants that "[t]he data you provided does not represent all cases and/or procedures performed as part of the program" and that "[t]he mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of *only a portion* of heart operations performed by the program."²⁹ That letter similarly informed the CNN Defendants that "*raw mortality data ... does not give proper context for the complexity and severity of each case, [and] could potentially lead to providing misleading information to consumers.*"³⁰ The letter also informed the CNN Defendants that, contrary to being a faltering program in crisis, the Program received positive feedback from a State of Florida inspection and received a two-star ranking from the STS, the leading medical professional data repository that benchmarks the performance of pediatric cardiac surgery programs across the country and that even the CNN Defendants recognize as the "gold standard" in the industry. At the same time, St. Mary's again requested to know when the CNN Defendants planned to run the story about Dr. Black and the St. Mary's Program and on what show.

²⁹ Letter from Davide Carbone, CEO, St. Mary's Medical Center, to Elizabeth Cohen (Feb. 27, 2015) (attached hereto as Exhibit E).

³⁰ *Id.*

94. The CNN Defendants deliberately ignored and consciously disregarded the information in Mr. Carbone's February 27, 2015 letter and persisted in their predetermined goal of demonizing Dr. Black and the Program.

95. The CNN Defendants were aware that, as Mr. Carbone explained in his letter, the data upon which it based its claimed 12.5% mortality rate for the Dr. Black and the St. Mary's Program encompassed "only a portion of heart operations performed by the program" and was therefore "inaccurate." In an April 21, 2015 email, Cohen expressly acknowledged that the CNN Defendants' mortality rate "calculation ... is based on the number of pediatric *open heart* surgery cases reported by St. Mary's to the Florida Agency for Healthcare Administration as part of its annual condition compliance report." As explained below, the CNN Defendants likewise knew that the STS national mortality rate to which the CNN Defendants compared Dr. Black's and the Program's mortality rate in their stories includes *both* open-heart *and* closed-heart surgeries.

96. The CNN Defendants further ignored St. Mary's request for information about when the story about the St. Mary's Program would run.

97. St. Mary's again requested information regarding when the CNN Defendants' story about the St. Mary's Program would run on multiple additional occasions throughout March and April 2015, and despite a promise from CNN Vice President and Senior Editorial Director Richard Griffiths to "get back to" St. Mary's with that information, the CNN Defendants never provided it.

98. Indeed, St. Mary's only became aware that the CNN Defendants were about to publish their story on St. Mary's and Dr. Black after a Tenet Healthcare employee saw a promo for the story on CNN's television station that stated that "babies are dying at an alarming rate" at St. Mary's. After seeing that promo, on June 1, 2015—before the article and video broadcast were published later that day—St. Mary's yet again reached out to CNN to express concern that

“based on the promo stating that ‘babies are dying at an alarming rate’ that the story will contain information that is not factual and that is defamatory,” and informing CNN that “the promos are running today but their ongoing use is not consistent with the information [Tenet Healthcare] ha[s] provided to Elizabeth Cohen and constitutes actual malice.” Nevertheless, the CNN Defendants went ahead and published their defamatory article and video broadcast.

**The CNN Defendants Act With Actual Malice By Ambushing St. Mary’s
Then-CEO Davide Carbone And His Wife At Their Home Early In The Morning**

99. Despite having received a detailed letter from Mr. Carbone answering many of their questions (and explaining why some questions could not be answered)—including providing information regarding the Program’s and Dr. Black’s mortality rates—Cohen, purportedly to obtain comment from Mr. Carbone, ambushed Mr. Carbone and his wife in front of their home early in the morning on March 13, 2015. At that time, Mr. Carbone was in his garage, as was his wife, who was still in her nightclothes.



*Elizabeth Cohen & John Bonifield, Video:
“The Hospital with a Serious Heart Problem” (June 1, 2015) (Screenshot)*

100. The CNN Defendants did not intend to obtain information for their story from Mr. Carbone when Cohen and a CNN camera crew ambushed him and his wife at their home. Rather, the CNN Defendants intended to obtain footage for their story that would falsely portray Mr. Carbone and, by implication, St. Mary's and Dr. Black, as unwilling to provide information about the Program, despite Mr. Carbone's February 27, 2015 letter.

101. That same day, St. Mary's called Griffiths and emailed Bonifield to discuss the CNN Defendants' actions. Griffiths professed ignorance of the CNN crew going to the Carbone's home (and stated that he had not read Mr. Carbone's February 27, 2015 letter), but promised to investigate the matter. Additionally, in response to yet another request by St. Mary's for information about when the CNN Defendants' story about the St. Mary's Program would air, Griffiths promised that he or someone else would "get back to" St. Mary's with that information. Neither Griffiths nor anyone else did. Bonifield, for his part, responded to St. Mary's email and said that he was on a plane but would call to discuss the matter when he landed. Bonifield never called as promised either.

**The CNN Defendants Act With Actual Malice By Knowingly Seeking
Protected Information From St. Mary's—Without Securing HIPAA Waivers**

102. Throughout their correspondence with St. Mary's about the Program, the CNN Defendants repeatedly asked St. Mary's for information about the Program and patients of the Program that CNN knew St. Mary's was prohibited from disclosing by the Health Insurance Portability and Accountability Act ("HIPAA")³¹—without securing a HIPAA waiver so that St. Mary's could answer their questions.

³¹ Health Insurance Portability and Accountability Act ("HIPAA"), Pub. L. No. 104-191, 110 Stat. 1936.

103. For example, on April 3, 2015, Cohen emailed St. Mary's and asked about a specific "neonatal patient at St. Mary's who had an operation ... to repair his truncus arteriosus," and asked St. Mary's to comment about the operation on that patient. St. Mary's responded to Cohen's email and explained that it could not comment unless the patient's family provided a HIPAA waiver.

104. Similarly, on April 9, 2015, Cohen emailed St. Mary's and asked about a recent "complicated congenital heart surgery on a baby" that Dr. Black performed.

105. The CNN Defendants knew at the time they asked these questions that neither St. Mary's nor Dr. Black could comment about specific patients and procedures performed on them because such information was protected from disclosure by HIPAA. The CNN Defendants further knew that in order for St. Mary's or Dr. Black to be allowed by law to comment on specific patients, those patients (or, for minors, their parents/guardians) would have to execute a waiver of their HIPAA privacy rights.

106. The CNN Defendants did not obtain and, upon information and belief, did not even attempt to obtain, HIPAA waivers from patients before asking St. Mary's and Dr. Black to comment about them, which demonstrates their actual malice by purposefully avoiding truthful information about patients they intended to portray as Dr. Black's "sacrificial lambs."

**The CNN Defendants Publish False And Defamatory Statements
About Dr. Black In The June 1, 2015 Article**

107. Notwithstanding the objective success of St. Mary's pediatric cardiac surgery program under Dr. Black's leadership, on June 1, 2015, the CNN Defendants published a highly inflammatory and damaging article—titled "Secret Deaths: CNN Finds High Surgical Death

Rate for Children at a Florida Hospital” (the “June 1 Article”)³²—and a companion video report—titled “The Hospital with a Serious Heart Problem” (the “June 1 Video Report”)³³—about Dr. Black and the St. Mary’s Program on CNN’s website. The defamatory article and the defamatory video report were originally published on CNN.com on June 1, 2015. Upon information and belief, the video report was broadcast on live television on CNN throughout the day on June 1 and June 2, 2015.

108. The June 1 Article presents a scathing indictment of Dr. Black and St. Mary’s pediatric cardiac surgery program.

109. The article begins with the emotional story of a seven-week-old baby on whom Dr. Black performed a complex surgery to repair a potentially fatal congenital heart defect, but who, tragically, suffered an episode after that surgery that left her paraplegic. A reasonable reader would understand—and readers did in fact understand—that the article suggests that Dr. Black provided that baby substandard care and that he was responsible for the baby’s subsequent paralysis. The CNN Defendants, however, intentionally omit key facts regarding the coarctectomy that Dr. Black performed on the baby, including the facts that paralysis is a well-known risk associated with this surgery even when properly performed, that the baby moved all of her extremities following the surgery, and that there was no evidence of paralysis following the procedure as confirmed by the pediatric critical care, neurology, and cardiology doctors who examined the baby following her coarctectomy. In addition, the CNN Defendants never reported that there are well-credentialed, reasonably prudent pediatric cardiothoracic surgeons and other

³² Ex. A, Elizabeth Cohen & John Bonifield, “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital,” CNN (June 1, 2015), *supra* note 1.

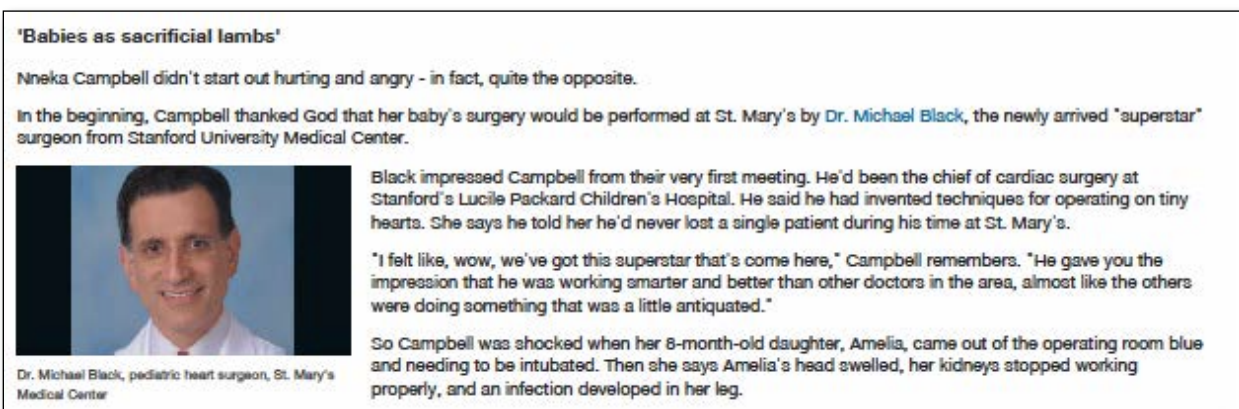
³³ Ex. B, Elizabeth Cohen & John Bonifield, Video: “The Hospital with a Serious Heart Problem” (June 1, 2015), *supra* note 2.

physicians who found no evidence that any part of that surgery was performed less than expertly and no evidence that the surgery caused the baby's subsequent paralysis. The CNN Defendants' implications that Dr. Black was responsible for the baby's paralysis are false. The CNN Defendants deliberately omitted these key facts to manufacture a heart-wrenching anecdote to support the article's false thesis that Dr. Black was an inexperienced surgeon operating on children "as sacrificial lambs" solely for the sake of making money at the expense of children's lives. The CNN Defendants further consciously and deliberately reported this story without obtaining or reporting any expert medical analysis regarding the patient's condition or surgery, instead intentionally choosing to present in the article (and related video report) only the emotionally charged quotes of the patient's parents.

110. Further setting the stage for the indictment of Dr. Black and the Program, the article then presents the reader with a vignette about a "stranger in [an] elevator" at St. Mary's who, immediately following that baby's surgery, warns the baby's parents that "staff had whispered to her about problems at the hospital's pediatric heart surgery program," recounting that "[t]here was talk that an unusually large number of babies were having complications and many weren't surviving." That stranger warns that baby's parents: "You need to get her out of here." Defendant Robinson is, and has admitted to being, the "stranger in the elevator" described and quoted in the article.

111. The article then presents the centerpiece of its indictment of Dr. Black and the Program: the article's false and defamatory claim that "[b]y the end of 2013, the mortality rate for babies having heart surgery there [at St. Mary's] was three times the national average." Immediately after making that claim, the article introduces the reader to its primary target: Dr. Black, the Medical Director, head of the pediatric cardiac surgery program at St. Mary's, and surgeon who performed all of the Program's pediatric cardiac surgeries. It does so by

sarcastically—through the use of “scare quotes”—labeling him “the newly arrived ‘superstar’ surgeon,” and juxtaposing his photograph with the bold-text headline “Babies as sacrificial lambs”:



June 1 Article (Excerpt)

112. The article continues with another emotional anecdote of a baby who lost her life to a congenital heart defect after being transferred to Nicklaus (Miami) Children’s Hospital. A reasonable reader of the article would understand—and readers did in fact understand—the article to suggest that Dr. Black provided that baby substandard care and that he was responsible for the baby’s subsequent death. The article, however, again intentionally omits key facts regarding that baby’s condition, surgery, and subsequent non-treatment. The CNN Defendants omitted these facts to create the false perception that Dr. Black caused the baby’s death, that Dr. Black was an inexperienced surgeon, and that Dr. Black was treating the child as a “sacrificial lamb[.]”

113. Tellingly, an expert who has reviewed that baby’s medical records has expressly opined that Dr. Black provided the baby with the appropriate treatments for her otherwise fatal condition, that Dr. Black exercised sound medical judgment in treating her, that Dr. Black’s technique was “well within” the standard of care, and that there is nothing in the baby’s medical

records that would relate the baby's death—two months after Dr. Black's cardiac repair—to Dr. Black's care and treatment.

114. Then, the article presents what it calls "[t]he shocking numbers," making the false and defamatory statement that Dr. Black's "death rate for open heart surgeries [was] 12.5%, more than three times the national average of 3.3% cited by the Society of Thoracic Surgeons." These statistics—and this comparison—however, are wholly inaccurate. The CNN Defendants knowingly and intentionally presented fabricated statistics and this false comparison with the specific intent to portray Dr. Black as an incompetent, unqualified, and reckless surgeon, who was leading a surgical program in crisis.

115. To continue to appeal to readers' emotions, the article then provides additional anecdotes involving the few children who Dr. Black could not save from their fatal congenital heart and genetic defects—while intentionally ignoring completely the overwhelming majority of patients he saved from certain death—presenting those anecdotes alongside gut-wrenching photographs of babies following their complex surgeries. The visual depiction of these post-operative children is intended to inflame readers' emotions and reinforce the CNN Defendants' false and defamatory statements that Dr. Black treated "[b]abies as sacrificial lambs," and made "[a] total mess with newborn babies."

116. As with the June 1 Article's initial two anecdotes, the CNN Defendants intentionally omitted key facts regarding the children's grave congenital and genetic conditions, the children's positive responses to Dr. Black's surgeries from a cardiac standpoint, and evidence that at all times Dr. Black met or exceeded all standards of care required of his profession and specialty. Moreover, with respect to each of these children, the CNN Defendants intentionally omitted those facts in order to falsely portray Dr. Black as a reckless, irresponsible, and

incompetent doctor who operated on babies and treated them “as sacrificial lambs” in order to earn a profit.

117. To bolster their false narrative that Dr. Black is unqualified to perform pediatric cardiac surgeries, the CNN Defendants then paint a false picture of Dr. Black as inexperienced and downright reckless. To that end, the CNN Defendants quote Marquita Campbell, the mother of a child Dr. Black was unable to save from his fatal heart condition, as asking “[w]hy did they do the surgery there if they didn’t know what they were doing?” and, below a bold-face headline proclaiming “[a] total mess with newborn babies,” state that “multiple studies show hospitals like St. Mary’s tend to give the worst-quality care to children with heart defects, because they get so little practice.” A reasonable reader would understand—and readers did in fact understand—that the article suggests, through the use of these statements and elsewhere, that Dr. Black is inexperienced in performing pediatric cardiac surgery and that he therefore recklessly performed pediatric cardiac surgeries at St. Mary’s. Yet, the article fails to mention, among other things, that Dr. Black has performed *thousands* of successful operations on neonates’ and infants’ hearts and that Marquita Campbell’s fetus was identified in utero as having a rare form of congenital heart disease that carried a high mortality rate even in optimal circumstances.

118. Finally, to solidify its indictment of Dr. Black and the St. Mary’s Program, the article discusses reports authored by five doctors as part of a review of the St. Mary’s Program conducted on behalf of the Florida Department of Health Children’s Medical Services. Although the article claims that those reviews were “scathing,” and highlights, out of context, portions of those reviews designed to support that characterization, the CNN Defendants consciously omitted the many *positive* reviews and qualifications of the critiques offered in those reports.

119. For example, the article cites a report by Dr. Jorge McCormick as finding that the Program lacked pediatric electrophysiology expertise (expertise in the study of abnormal heart

rhythms) and did not perform enough cardiac catheterizations, but it omits Dr. McCormick's bottom-line conclusions that "the pediatric cardiology component of the program at St. Mary's has historically served the area very well for many years" and that the Program had "contracted with [pediatric cardiologist] Dr. Jay Chandar for cardiac catheterization support."

120. Similarly, although the article presents an apparent critique from Dr. Ira Gessner regarding the Program's electrocardiogram reports, it omits Dr. Gessner's admissions in his report that he is "not an echocardiographer," that the "inadequacies" he perceived may actually have been due to his own failure to make his requests for information clear, and that he did not take the necessary time to review the charts he reviewed.

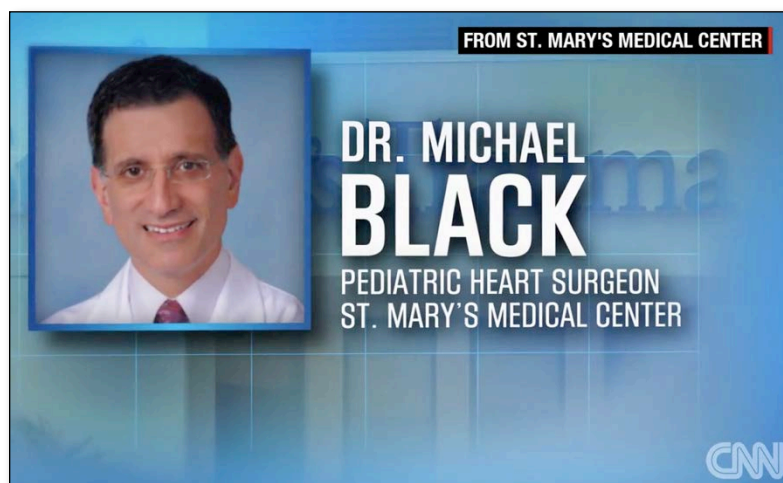
121. The article also intentionally omits key conclusions by Dr. Jeffery Jacobs, whose report the article describes and presents as the "most scathing" review of the Program. Contrary to the statements and implications in the article, Dr. Jacobs expressly stated in his report that "Michael Black is a fully trained pediatric heart surgeon with excellent credentials," that his (Dr. Jacobs') review of charts of patients in the Program indicated "excellent quality medicine and surgery," that "[a]ll of the chart reviews demonstrated high quality pediatric cardiac surgery as well as charting and documentation consistent with CMS standards," that "postoperative care is consistent with CMS guidelines," and that the Program's "Surgical Environment," "Equipment," and "Quality and Quality Improvement/Utilization Review" all meet CMS guidelines.

122. In addition, the article intentionally fails to disclose that Dr. Jacobs gave a very positive oral evaluation report to St. Mary's following his review of the St. Mary's Program. Upon information and belief, the CNN Defendants were aware (and certainly should have been aware) of Dr. Jacobs' positive oral evaluation report of the St. Mary's Program because Dr. Jacobs was a source for the article.

The CNN Defendants Repeat Their False And Defamatory Statements In A June 1 Video Report And Broadcast

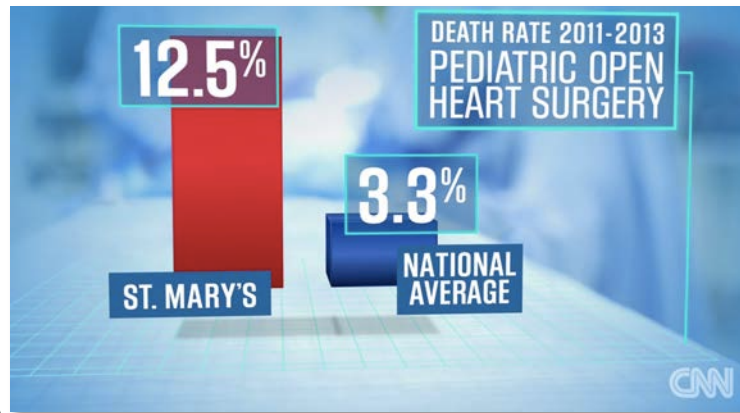
123. The June 1 Video Report published by the CNN Defendants follows a similar pattern to the June 1 Article. It begins with the same story of the seven-week-old baby on whom Dr. Black performed a complex surgery to repair a fatal congenital heart defect, but who, tragically, suffered an episode after that surgery that left her paraplegic. As with the June 1 Article, a reasonable viewer would understand—and viewers did in fact understand—that Dr. Black provided that baby substandard care and that he was responsible for the baby’s subsequent paralysis. The video intentionally omits the same key facts that were omitted in the article regarding the coarctectomy that Dr. Black performed on the baby, to support the video’s false thesis that Dr. Black was an inexperienced surgeon operating on children “as sacrificial lambs” solely for the sake of making money at the expense of children’s lives. The CNN Defendants further consciously and deliberately reported this story without obtaining or reporting any medical analysis regarding the patient’s condition or surgery, instead intentionally choosing to present in the video only the emotionally charged quotes from the patient’s parents.

124. The June 1 Video Report then immediately introduces the viewer to its main target: Dr. Black.



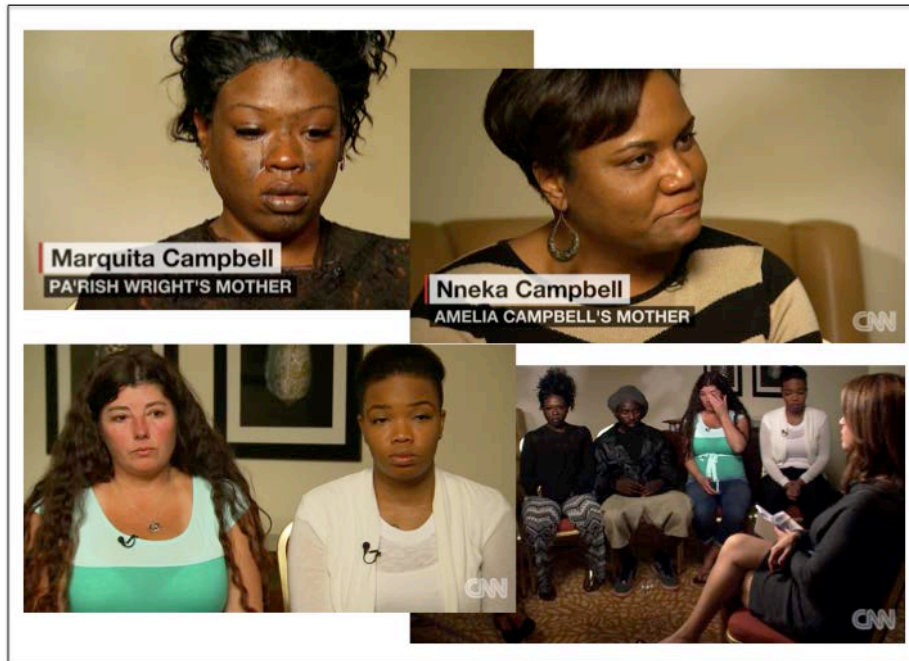
June 1 Video Report (Screenshot)

125. The video then presents the false and defamatory claim “that from 2011 to 2013, the death rate for open-heart surgery on children at St. Mary’s Medical Center was more than three times higher than the national average,” alongside a graphical representation of that false and defamatory statement:



June 1 Video Report (Screenshot)

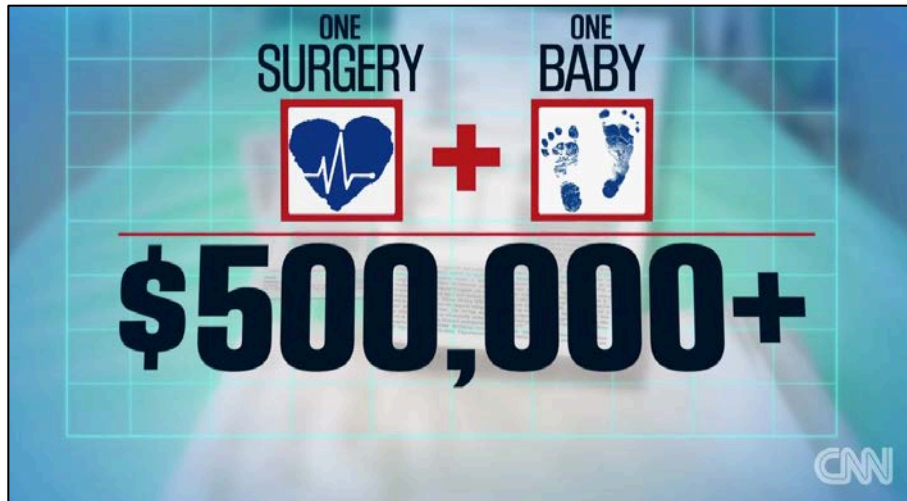
126. To appeal to viewers’ emotions and fuel outrage against Dr. Black, the video then presents an emotionally-charged interview of parents of the few children Dr. Black was unable to save. In the June 1 Video Report (like the June 1 Article), the CNN Defendants intentionally omit critical information about these children’s conditions and procedures in order to paint a false negative picture of Dr. Black, including key facts regarding the children’s grave conditions, their responses to Dr. Black’s surgeries, and evidence that at all times Dr. Black met or exceeded all standards of care. Moreover, with respect to each of these children, the CNN Defendants intentionally omitted those facts in order to falsely portray Dr. Black as a reckless, irresponsible, and incompetent doctor who operated on babies and treated them “as sacrificial lambs” in order to earn a profit. (*See supra* ¶¶ 112-117.)



June 1 Video Report (Screenshots)

127. The CNN Defendants repeat the selective negative quotes of reports authored by doctors as part of the review of the St. Mary's Program conducted on behalf of the Florida Department of Health Children's Medical Services, omitting, as they did in the June 1 Article, the many *positive* reviews and qualifications of the critiques offered in those reports. (*See supra* ¶¶ 118-122.)

128. The June 1 Video then poses the question why Dr. Black continued to perform heart surgery on children, and suggests to its audience that “the answer may come down to one thing: money.”



June 1 Video Report (Screenshot)

129. That suggestion is false and defamatory. Dr. Black has dedicated his career and his life to helping some of society's sickest and most vulnerable children, not for personal profit, but to save lives. While at St. Mary's, Dr. Black never turned away or refused a patient due to that patient's inability to pay or a patient's lack of insurance coverage.

130. In addition, contrary to the CNN Defendants' statement and implication that St. Mary's and/or Dr. Black receive "\$500,000+" for each surgery Dr. Black performed, Dr. Black is a salaried employee who did not receive additional income from the surgeries he performed, and St. Mary's in fact often collected only a small sum for the surgeries performed by Dr. Black because many of the Program's patients were extremely poor. Dr. Black certainly never received hundreds of thousands of dollars for each surgery he performed.

131. CNN knew that its statements and innuendo were false. Indeed, the fact that the CNN Defendants acknowledged in a February 17, 2015 email that "the year two incremental operating profit for St. Mary's pediatric open heart surgery program was projected to be \$876,752," demonstrates that the CNN Defendants knew that St. Mary's could not be making over \$500,000 for each procedure that Dr. Black performed.

The CNN Defendants Intentionally Manipulated Statistics To Fabricate Their Claim That Dr. Black's Mortality Rate Was 12.5% Or "Three Times The National Average"

132. The CNN Defendants' claims regarding Dr. Black's and the Program's mortality rate are demonstrably false. The CNN Defendants intentionally and maliciously conducted a knowingly methodologically flawed statistical analysis of Dr. Black's mortality rate, and then made an inappropriate apples-to-oranges comparison with STS data. The CNN Defendants' actions were an intentional manipulation and comparison of data designed to falsely portray Dr. Black in the most negative light possible. Indeed, Cohen, who holds a Master of Public Health degree, has publicly boasted, "I know how to evaluate studies from a statistical point of view ... and that kind of training is absolutely invaluable."³⁴

133. According to the CNN Defendants, as stated in the June 1 Article and Video Report, "[b]y the end of 2013, the mortality rate for babies having heart surgery [at St. Mary's] was three times the national average," and the Program's "death rate for open heart surgeries [was] 12.5%, more than three times the national average of 3.3% cited by the Society of Thoracic Surgeons."

134. As an initial matter, those statements are false because the CNN Defendants knowingly and misleadingly compared a mortality rate for Dr. Black and the Program that only considered Dr. Black's and the Program's *open-heart* surgeries to a STS national rate that includes *both* open-heart *and* closed-heart surgeries. This fact is significant because it is widely known (including by the CNN Defendants) that open-heart surgical procedures, which involve surgery on the internal structures of the heart and typically require reliance on a heart-lung bypass machine during the surgery, are far more delicate and complex procedures and have

³⁴ "Faces of Public Health: A Q&A with Elizabeth Cohen, Senior Medical Correspondent, CNN," *The Robert Wood Johnson Foundation* (May 31, 2011), *supra* note 9.

significantly higher mortality rates than closed-heart surgical procedures. Thus, by knowingly comparing a mortality rate for Dr. Black based only on open-heart surgeries to a mortality rate based on both open-heart *and* closed-heart surgeries, the CNN Defendants knowingly and artificially inflated Dr. Black's mortality rate vis-à-vis the STS national average. A true and fair comparison would require an apples-to-apples comparison of Dr. Black's mortality rate for both open- and closed-heart surgeries to the STS national average.

135. The CNN Defendants understood that they were only considering Dr. Black's open-heart procedures, and that STS data considered both open- and closed-heart procedures. But the CNN Defendants knowingly and intentionally concealed from their readers and viewers that their statistical analysis considered only open-heart surgeries while the STS national mortality rate included both open- and closed-heart surgeries.

136. After intentionally inflating Dr. Black's mortality rate, the CNN Defendants then went on to make a wholly false and defamatory comparison to STS data. The CNN Defendants intentionally and falsely suggested that Dr. Black and the Program had artificially high pediatric cardiac surgical mortality rates by comparing a *non-risk-adjusted* mortality rate for surgeries that Dr. Black performed to the STS national average mortality rate, which, because of the sheer volume of patients and procedures it encompasses, reflects a *risk-adjusted* mortality rate.

137. Although the CNN Defendants knew that the use of non-risk adjusted data to evaluate mortality rates for individual programs is methodologically inappropriate, the CNN Defendants intentionally and consciously elected to use non-risk adjusted data to artificially inflate Dr. Black's mortality rate to present him in the most negative possible light.

138. The distinction between risk-adjusted mortality rates and non-risk adjusted mortality rates matters tremendously. As Dr. Marshall L. Jacobs, Chair of the STS Congenital Heart Surgery Database, explained in February 25, 2015 STS press release (which is also posted

on the STS website) announcing the public release of surgical outcomes from the STS Congenital Heart Surgery Database—the data upon which the CNN Defendants relied for their misleading comparisons:

Reporting hospital surgical outcomes *using risk-adjusted analysis is extremely important because it allows for a fair assessment, on a level playing field, of outcomes across hospitals that treat different populations of patients.* ... As pediatric and congenital cardiac surgeons, we perform operations on patients born with a wide variety of heart defects of varying complexity, and many patients have additional risk factors. Adjusting for these risk factors allows us to better understand reported mortality rates, especially for centers that operate on the most challenging patients.³⁵

139. Similarly, the STS website itself explains the importance of using risk-adjusted data to compare surgical outcomes across hospitals. On the STS website titled “Explanation of STS CHSD [Congenital Heart Surgery Database] Mortality Risk Model,” the STS explains:

The 2014 STS CHSD mortality risk model incorporates case-mix (risk) adjustment to allow for a fair comparison of hospitals performing congenital and pediatric cardiac surgery. Adjustment for case mix is especially important because hospitals that tend to treat sicker patients are expected to have higher rates of mortality, which may be due to the condition of these patients or the complexity of the procedures required to treat them, and not necessarily because of the care they received. To level the playing field, the 2014 STS CHSD mortality risk model takes into account the variables listed in the table above, all of which can affect surgical results.³⁶

140. The CNN Defendants were aware of the importance of using risk-adjusted data to compare surgical outcomes across hospitals and programs, and recklessly ignored these facts while presenting their defamatory comparison of Dr. Black’s mortality rate to the national average.

³⁵ Press Release, Society of Thoracic Surgeons, Heart Surgery Outcomes for Pediatric and Congenital Patients Now Online (Feb. 25, 2015), *available at* <http://www.sts.org/news/heart-surgery-outcomes-pediatric-and-congenital-patients-now-online>.

³⁶ Society of Thoracic Surgeons, Explanation of STS CHSD [Congenital Heart Surgery Database] Mortality Risk Model, <http://www.sts.org/quality-research-patient-safety/sts-public-reporting-online/explanation-of-sts-chsd-mortality-risk-model> (last visited Feb. 2, 2016).

141. In Defendant Cohen’s April 24, 2015 email to Tenet Healthcare, she quoted and linked to the STS’s website, specifically a page titled “STS CHSD Mortality Risk Model and Star Ratings” that linked directly to the STS’s “Explanation of STS CHSD Mortality Risk Model” that explained the need to use risk-adjusted data to fairly compare hospitals and programs.

142. Indeed, Dr. Jeffrey Jacobs—friend of Cohen, and, upon information and belief, a source for the CNN Defendants’ defamatory articles, broadcasts, and video reports—has repeatedly written about the importance of only using risk-adjusted mortality rates to compare surgical outcomes across hospitals and programs. For example, Dr. Jacobs has explained in a paper he co-authored in the peer-reviewed *Annals of Thoracic Surgery*, that “risk adjustment has [] been regarded by most [] as an **essential component** of outcomes profiling,” and that “unadjusted data often misclassify programs as high or low mortality outliers when in fact their results are average.”³⁷

143. And just last year Dr. Jacobs publicly stated in a letter he co-authored that “the STS has long been concerned about the potentially misleading nature of raw surgical outcomes data, particularly raw mortality data.” The reason is simple and was readily understood by the CNN Defendants at the time they conducted their intentionally flawed analysis:

“The goal of case-mix (risk) adjustment is to allow for comparison, on a level playing field, of hospitals that treat different populations of patients. Hospitals that tend to treat many patients with high-risk diagnoses ... are expected to have higher rates of mortality than those that tend to treat primarily relatively low-risk diagnoses ... [and] even with the same diagnosis, patients can present differently and with a variety of risk factors. Hospitals that perform surgery on patients with more severe disease and/or risk factors may have higher observed mortality rates than some hospitals that perform the same operations in comparatively healthier

³⁷ David M. Shahian, MD, Xia He, MS, Jeffrey P. Jacobs, MD et al., “Issues in Quality Measurement: Target Population, Risk Adjustment, and Ratings,” 96 *Annals of Thoracic Surgery* 718, 724 (2013).

patients. *Because hospitals tend to treat different populations of patients, differences in raw unadjusted mortality are not useful for assessing and comparing performance.* Case-mix adjustment models allow for more meaningful comparison of hospitals.”³⁸

144. Upon information and belief, the CNN Defendants had reviewed Dr. Jacobs’ letter and/or prior published papers and/or had corresponded with Dr. Jacobs about the use of raw, non-risk-adjusted mortality rates prior to publishing the June 1 Article and Video Report.

145. Upon information and belief, the CNN Defendants knew prior to publishing the June 1 Article and Video Report that using non-risk adjusted data would yield higher mortality rates for Dr. Black and the Program, and they knew that STS and Dr. Jacobs had counseled the public not to rely upon non-risk-adjusted data to evaluate individual doctor or hospital mortality rates.

146. As part of their efforts to mask their intentional manipulation of these statistics, the CNN Defendants did not disclose the critical differences in the assumptions, data, and methodology they used and those used by the STS in calculating mortality rates. A reasonable reader and viewer is left without complete information with which to form an independent judgment about the reliability of the CNN Defendants’ analysis.

The Florida Agency For Health Care Administration Blasts CNN’s “Sensationalized Reporting”


147. The Florida Agency for Health Care Administration (“AHCA”) reached out to CNN on June 5, 2015 to take issue with their “sensationalized reporting.” In a public statement three days later, titled “SETTING THE RECORD STRAIGHT: CNN Mischaracterizes State’s Efforts Concerning St. Mary’s Medical Center,” the AHCA explained, among other things, that

³⁸ Letter from Jeffery P. Jacobs, MD, David A. Fullerton, MD, David M. Shahian, MD, Richard L. Prager, MD, & Marshal L. Jacobs, MD to STS Congenital Heart Surgery Database Participants, at 1-2 (July 22, 2014).

it “conducted an annual comprehensive risk management survey in Oct. 2014 and looked at issues raised in a Children’s Medical Services site review concerning the facility’s pediatric cardiac program”—the site review heavily relied upon by the CNN Defendants in their Articles and Video Reports—and unambiguously stated that “[t]he Agency *did not identify noncompliance related to the issues raised*,” and hospital-wide found only three minor deficiencies relating to the entire facility’s risk management and prevention. The statement further explained that CNN not only intentionally omitted information provided to it by the AHCA, but affirmatively reported untrue information in its June 2015 Articles. Specifically, the AHCA Statement provided:

- “AHCA spoke with CNN multiple times on Friday [June 5, 2015] regarding their story regarding St. Mary’s Medical Center. CNN then reported that AHCA had not responded to a request for an interview. CNN then reported that the state was ‘not investigating,’ and **failed to report the five site visits conducted over the last six months.**”
- “In March of 2015, AHCA told CNN it had conducted five unannounced inspections at St. Mary’s Medical Center within the past six months, two were related to the pediatric cardiac program. This information was reiterated multiple times over the last three months to the reporter.”
- “CNN reported that the Centers for Medicare & Medicaid Services (CMS) launched an investigation. **AHCA conducts investigations on behalf of CMS.** After being given this background information by AHCA, CNN left this important fact out of their story and reported that the state was ‘not investigating.’”³⁹

³⁹ Press Release, Florida Agency for Health Care Administration, “SETTING THE RECORD STRAIGHT: CNN Mischaracterizes State’s Efforts Concerning St. Mary’s Medical Center” (June 8, 2015) (emphases in original), *available at* https://ahca.myflorida.com/Executive/Communications/Press_Releases/archive/docs/2014_2015/jun/STRS_CNNignoresfacts.pdf.



FOR IMMEDIATE RELEASE
June 8, 2015

RICK SCOTT
GOVERNOR
ELIZABETH DUKAKIS
SECRETARY

Setting the Record Straight: CNN mischaracterizes State's efforts concerning St. Mary's Medical Center

Tallahassee, FL – Late last week, CNN published a story that failed to include information provided to them about steps AHCA has taken to hold St. Mary's Medical Center accountable to the patients they serve. AHCA takes very seriously our responsibility to provide oversight to hospitals to better protect children.

Here's the statement that CNN chose not to use in its sensationalized reporting. It was provided to them on Friday, June 5:

"AHCA takes the allegations reported by CNN extremely seriously. We have conducted five site visits over the last six months and will continue to work with our partner agencies to hold this hospital accountable to the patients they serve." – AHCA Secretary Elizabeth Dukakis

FACTS:

- AHCA spoke with CNN multiple times on Friday regarding their story regarding St. Mary's Medical Center. CNN then reported that AHCA had not responded to a request for an interview. CNN then reported that the case was "not investigating," and failed to report the five site visits conducted over the last six months.
 - In March of 2015, AHCA told CNN it had conducted five unannounced inspections at St. Mary's Medical Center within the past six months, two were related to the pediatric cardiac program. This information was reiterated multiple times over the last three months to the reporter.
- CNN reported that the Centers for Medicare & Medicaid Services (CMS) launched an investigation. AHCA conducted investigations on behalf of CMS. After being given this background information by AHCA, CNN left this important fact out of their story and reported that the case was "not investigating."

Steps Taken by AHCA to Hold St. Mary's Accountable

- AHCA conducted an annual comprehensive risk management survey in Oct. 2014 and looked at issues raised in a Children's Medical Services site review concerning the facility's pediatric cardiac program. The Agency did not identify noncompliance related to the issues raised but did cite the facility for deficiencies for failing to:
 - Implement system-wide corrective measures to minimize the risk of adverse incidents.
 - Ensure the forms used for adverse incident reporting is properly filled out by staff.
 - Ensure the 1 hour annual risk management and risk prevention education was completed for staff.
- All hospitals are required to have a risk management program that includes the investigation and analysis of the frequency and causes of patient adverse incidents, which may include death. The development of appropriate measures to minimize the risk of adverse incidents to patients is also a requirement.
 - In response to these findings, a revisit to the facility was conducted and the outstanding deficiencies found were corrected.
- The Agency has only received one complaint concerning St. Mary's pediatric cardiac program, which was investigated in October 2013. In this complaint investigation, as in every case we investigate, the Agency investigated every aspect of care related to the complaint. The Agency cited the facility for issues related to its risk management program and the Agency retained the facility to confirm these problems had been corrected.
- The Agency conducts multiple unannounced inspections at St. Mary's Medical Center as part of our ongoing oversight of hospital operations. As with every complaint we receive, we will fully review any new allegations.

SETTING THE RECORD STRAIGHT: CNN mischaracterizes State's efforts concerning St. Mary's Medical Center

The Agency did not identify noncompliance related to the issues raised

Florida Agency for Health Care Administration, "SETTING THE RECORD STRAIGHT: CNN Mischaracterizes State's Efforts Concerning St. Mary's Medical Center" (June 8, 2015)

148. Notwithstanding all of this information—both publicly available and specifically provided to the CNN Defendants—those Defendants steadfastly refused to retract or correct their defamatory statements and instead doubled-down on them repeatedly over the ensuing months, thereby greatly expanding the audience that saw them and magnifying the damage to Dr. Black. Moreover, the CNN Defendants have willfully and maliciously kept their articles, video reports, and social media posts publicly available online to this day.

**After Receiving Further Information, The CNN Defendants
Repeatedly Refuse To Retract Or Correct—And Instead Double-Down On—
Their False And Defamatory Statements**

149. Following the CNN Defendants' publication of their false and defamatory June 1 Article, broadcast, and Video Report, St. Mary's again reached out to CNN and issued a statement explaining that the CNN Defendants' statistical claims were completely false.

150. In that statement, which St. Mary's issued on June 7, 2015, St. Mary's again informed the CNN Defendants that they "inaccurately calculated [the Program's] mortality rate based on an incorrect assumption of [the] program's volume," and that, specifically, the "Certificate of Need reports filed with the Florida Agency for Health Care Administration"—on which the CNN Defendants relied to determine the Program's volume—"included only a subset of the procedures performed by the program and reported to the Society of Thoracic Surgeons (STS)."⁴⁰ As a result, the statement pointed out, "the mortality rate calculated by Ms. Cohen is exaggerated, and the comparison between that exaggerated mortality rate and the national average mortality rate as calculated and reported by the STS is completely erroneous."⁴¹ The statement further explained that according to the Fall 2014 STS Congenital Heart Surgery Database Report, the risk-adjusted mortality rate for St. Mary's Pediatric Cardiac Program was 5.3%, and that that figure had a 95% confidence interval that encompassed the STS National Average 3.4% mortality rate, meaning that there is no statistically significant difference between the St. Mary's Program's mortality rate and the national average. The statement further informed CNN, again, that the STS awarded the Program a two-star rating along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United

⁴⁰ St. Mary's Medical Center Congenital Heart Surgery Program Data ("St. Mary's Statement") (June 7, 2015) (attached hereto as Exhibit F).

⁴¹ *Id.*

States, “showing that the mortality rate for [the St. Mary’s] [P]rogram is within the expected range relative to the national average.”⁴²

151. Despite that clear and unambiguous information demonstrating the falsity of the CNN Defendants’ defamatory statements about Dr. Black in the June 1 Article, broadcast, and Video Report, the CNN Defendants refused to retract or correct those statements.

152. Instead, on June 9, 2015, the CNN Defendants doubled-down on their defamatory statements in an article titled “What to Know About St. Mary’s Children’s Heart Surgery Mortality Rates” (the “June 9 Article”), authored by Cohen and Bonifield, in which the CNN Defendants sought to explain how they arrived at their false and defamatory statement in the June 1 Article that “by the end of 2013, the mortality rate for babies having heart surgery there [at St. Mary’s] was three times the national average” and that “the death rate for open heart surgeries [was] 12.5%, more than three times the national average of 3.3% cited by the Society of Thoracic Surgeons.”⁴³

153. The CNN Defendants did so even though they expressly admitted in the June 9 Article that “Bottom line: To calculate a mortality rate, you must know how many index operations were done, and we have no idea.”⁴⁴

154. Moreover, in the June 9 Article, the CNN Defendants admitted that in arriving at their conclusions regarding Dr. Black’s purported pediatric cardiac surgical mortality rate, they knowingly and intentionally used an observed, *non-risk-adjusted* mortality rate for Dr. Black

⁴² *Id.*

⁴³ Elizabeth Cohen & John Bonifield, “What to Know About St. Mary’s Children’s Heart Surgery Mortality Rates,” CNN (June 9, 2015), *available at* <http://www.cnn.com/2015/06/09/health/childrens-heart-surgery-mortality-rates-qa>; Ex. A, Elizabeth Cohen & John Bonifield, “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital,” CNN (June 1, 2015), *supra* note 1.

⁴⁴ Elizabeth Cohen & John Bonifield, “What to Know About St. Mary’s Children’s Heart Surgery Mortality Rates,” CNN (June 9, 2015), *supra* note 43.

and St. Mary's and compared that rate to a national STS average mortality rate—which, because of the sheer volume of patients and procedures it encompasses, reflects a *risk-adjusted* mortality rate. The CNN Defendants attempted to justify that comparison in the June 9 Article by claiming in it that “[t]he Society of Thoracic Surgeons thinks” that “a raw mortality rate [is] useful” and suggesting that the STS approves of the use of raw mortality rates to compare pediatric cardiac programs,⁴⁵ but the CNN Defendants knew at the time they made that statement—and well before they published the June 1 Article and Video Report—that the STS has in fact cautioned against using raw mortality rates and explained that using risk-adjusted mortality rates is “extremely important” in order to make “a fair assessment, on a level playing field, of outcomes across hospitals that treat different populations of patients.” (*See supra* ¶¶ 138-139.) The CNN Defendants were aware that their claim that the STS believes that a raw mortality rate is useful for evaluating and comparing pediatric cardiac surgical programs is false and were aware that that claim was false at the time they made it and well before they published the June 1 Article and Video Report.

155. In addition, in the June 9 Article, the CNN Defendants admitted that in calculating the observed, non-risk-adjusted mortality rate for Dr. Black they knowingly and intentionally did not use STS data, but instead calculated that rate based on different data submitted to the State of Florida for other purposes. This is significant because different data are submitted to the State of Florida and STS, and the State of Florida and STS treat the data sent to them differently, thereby providing an improper basis for comparison between and across the two samples.

⁴⁵ *Id.*

156. Furthermore, the CNN Defendants stated in the June 9 Article that they compared Dr. Black's and the Program's mortality rate "to the pediatric open heart surgery mortality rate nationwide," as provided by the STS.⁴⁶ That statement is false and the CNN Defendants knew it was false when they made it and well before they published the June 1 Article and Video Report. The CNN Defendants knew long before June 1, 2015 that the pediatric cardiac surgical mortality rates published by the STS include both open-heart and closed-heart surgeries. The CNN Defendants further knew at all relevant times that because open-heart surgeries are more complex and have higher mortality rates than closed-heart surgeries, they would artificially inflate Dr. Black's mortality rate vis-à-vis the STS national average rate by comparing a mortality rate for Dr. Black based only on open-heart surgeries to a mortality rate based on both open-heart *and* closed-heart surgeries.

157. The CNN Defendants further admitted in the June 9 Article that when comparing mortality rates "[i]t's important to look at as long a time frame as possible to make sure you're not capturing a time with a particularly high rate or a particularly low rate," and that the STS measures mortality rates based on four years of data, but that the CNN Defendants calculated a mortality rate for Dr. Black and the St. Mary's Program based on only three years of data. The CNN Defendants knew that doing so would artificially increase Dr. Black's and the Program's mortality rate; STS data confirms that that the Program's mortality rate in fact declined in its fourth year of operation.

158. Following the CNN Defendants' publication of that article, Tenet Healthcare—on behalf of St. Mary's and Dr. Black—wrote to the CNN Defendants on June 9, 2015 and again

⁴⁶ Elizabeth Cohen & John Bonifield, "What to Know About St. Mary's Children's Heart Surgery Mortality Rates," CNN (June 9, 2015), *supra* note 43.

informed them that their statements, calculations, and comparisons regarding the St. Mary's Program were false, defamatory, "deeply flawed," and "misleading," and demanded their immediate retraction.

159. The CNN Defendants, however, refused to retract or correct their defamatory statements about the Program and Dr. Black, and again doubled-down on them in a letter two days later, on June 11, 2015.

160. On June 13, 2015, Tenet Healthcare wrote to the CNN Defendants via certified mail and email (on behalf of St. Mary's and Dr. Black) to tell them again that their statements in their June 1 Article and subsequent articles and reports regarding the St. Mary's Program and Dr. Black—including the claim that their mortality rate is "three times the national average"—are false and defamatory.⁴⁷ That letter, like Tenet Healthcare's June 7 statement, again cited specific data demonstrating that according to the Fall 2014 STS Congenital Heart Surgery Database Report, the risk-adjusted mortality rate for St. Mary's pediatric cardiac surgery program was 5.3% and had a 95% confidence interval that encompassed the STS National Average 3.4% mortality rate, meaning that there is no statistically significant difference between St. Mary's Program's mortality rate and the national average. Tenet Healthcare's June 13, 2015 letter again requested an "immediate retraction" of the CNN Defendants' false and defamatory statements about the Program and Dr. Black and requested that "CNN cease its reporting on this matter."⁴⁸ The letter further made clear that "[t]ime is of the essence" because the CNN Defendants' false and defamatory statements are doing "real harm" to Dr. Black.⁴⁹

⁴⁷ Letter from Audrey Andrews to David Vigilante (June 13, 2015) (attached hereto as Exhibit G).

⁴⁸ *Id.*

⁴⁹ *Id.*

161. The CNN Defendants waited over a week to respond to Tenet Healthcare's letter, and when they did respond, via email on June 22, 2015, they again refused to retract or correct their defamatory statements about the Program and Dr. Black, and again doubled-down on them, even purporting to defend their use of a non-risk-adjusted mortality rate to compare Dr. Black and the Program to other hospitals and the STS's national average pediatric cardiac surgical mortality rate. The CNN Defendants did so even though, as explained above, they knew that their use of a non-risk-adjusted mortality rate was improper and painted a false picture of the Program's and Dr. Black's actual, satisfactory performance.

162. The same day that the CNN Defendants responded to Tenet Healthcare's letter, on June 22, 2015, Tenet Healthcare again wrote to the CNN Defendants, explaining in detail how the CNN Defendants' claimed 12.5% mortality rate for the Program and Dr. Black is incorrect. Among other things, that email explained that in arriving at that figure:

Ms. Cohen used a denominator (the volume of procedures) used by the State of Florida Certificate of Need process to determine whether to grant licenses to facilities for certain procedures. She then used raw mortality data as the numerator to create an incorrect mortality rate of 12.5 percent. She then compared that to a historical national mortality rate calculated by the Society of Thoracic Surgeons, which uses a larger denominator of procedures—not the narrower volume data used by the State of Florida for licensure purposes. She compared her incorrect rate of 12.5 percent to the STS national average mortality rate of 3.3 percent.⁵⁰

Thus, the email explained, the CNN Defendants essentially “divided an apple by an orange and compared it to a banana.”⁵¹ The email further noted that the Program had received a two-star rating from the STS along with every other such program in the State of Florida and nearly 70% of such programs nationwide—meaning that the mortality rate for the Program was statistically

⁵⁰ Email from Audrey Andrews to David Vigilante & Johnita Due (June 22, 2015, 2:11pm) (attached hereto as Exhibit H).

⁵¹ *Id.*

no different than the national average. The email yet again requested that the CNN Defendants retract their false and defamatory statements about the Program's and Dr. Black's mortality rate.

163. In their response by email over a week later, the CNN Defendants again refused to issue a retraction or correction and instead stood by their reporting.

164. Ultimately, in August 2015, because of the false and defamatory allegations in the CNN Defendants' articles and videos, and the effect those articles and videos had not only on the Palm Beach County community but nationwide—which, among other things, made it very difficult to build and maintain a sustainable volume for the Program, the decision was made to shut down St. Mary's pediatric cardiac surgery program.

The CNN Defendants Repeat And Republish Their Defamatory Statements In A Series Of Follow-Up Articles And Reports Designed To Maximize The Audience And Impact Of Their False And Defamatory Claims About Dr. Black And The Program

165. The CNN Defendants doubled-down on the false and defamatory statements about Dr. Black in their June 1 Article and Video Report again and again, repeating them in a series of separate follow-up articles and video reports posted on CNN.com and broadcast on CNN's television station to new audiences over the following weeks and months. The CNN Defendants' goal in repeating and republishing their highly inflammatory, inaccurate, and defamatory claims was simple: to maximize the impact of their "investigation" of Dr. Black by repeating and republishing their claims about Dr. Black to as many people as possible, thereby creating a national news story that cast the CNN Defendants as investigative heroes empowering supposedly uninformed patients and earning significant praise and ratings.

166. To that end, the CNN Defendants embarked on a sustained effort to manufacture a controversy about Dr. Black and to keep their reporting on Dr. Black and St. Mary's in the national news through a series of articles and video reports over the course of months:

- (a) On June 3, 2015, the CNN Defendants published to a worldwide audience on CNN.com an article titled “9th Baby Dies After Heart Surgery at Florida Hospital,” authored by Defendants Cohen and Bonifield. That article, which contained a hyperlink connecting the reader back to the June 1 Article, repeated the false and defamatory claim at the heart of the June 1 Article that “from 2011 to 2013, the [St. Mary’s pediatric cardiac surgery] program had a 12.5% mortality rate for open heart surgeries, which is more than three times the national average.”⁵²
- (b) On June 3, 2015, the CNN Defendants also published on CNN.com a companion video report titled “9th Baby Dies After Heart Surgery at Florida Hospital.” That video report also repeated the false and defamatory statements that “from 2011 through 2013, the [St. Mary’s pediatric cardiac surgery] program’s mortality rate for pediatric open heart surgeries was 12.5%. That’s more than three times higher than the national average.” The video additionally prominently featured a graphic titled “Death Rate 2011-2013 Pediatric Open Heart Surgery” that further repeated the CNN Defendants’ claim that “St. Mary’s” had a “death rate” of “12.5%” compared to a “National Average” “death rate” of “3.3%.”⁵³
- (c) On June 5, 2015, the CNN Defendants published on CNN.com an article titled “CNN Report on High Mortality Rate for Babies at Florida Hospital

⁵² Elizabeth Cohen & John Bonifield, “9th Baby Dies After Heart Surgery at Florida Hospital,” CNN (June 3, 2015), *available at* <http://www.cnn.com/2015/06/03/health/heart-surgery-death-st-marys-hospital-florida>.

⁵³ Elizabeth Cohen & John Bonifield, Video: “9th Baby Dies After Heart Surgery at Florida Hospital,” CNN (June 3, 2015), *available at* <http://www.cnn.com/videos/us/2015/06/03/baby-heart-surgery-death-ac-dnt-cohen.cnn>.

Leads to Inquiry,” authored by Defendants Cohen and Bonifield. That article, which also contained a hyperlink connecting the reader back to the June 1 Article, further repeated the false and defamatory statements that “between 2011 to 2013, the West Palm Beach hospital had a 12.5% mortality rate for open heart surgery, three times the national average.”⁵⁴

- (d) On June 5, 2015, the CNN Defendants also published on CNN.com and on CNN’s prime-time television show “Anderson Cooper 360°” a video titled “Fed. Govt. Investigates Baby Deaths at Florida Hospital.” That report directed the attention of a prime-time, national audience to the CNN Defendants’ “investigation” of and stories about Dr. Black and St. Mary’s.
- (e) On June 8, 2015, the CNN Defendants published on CNN.com an article titled “Hospital Suspends Elective Heart Surgeries on Children After CNN Investigation,” authored by Defendants Cohen and Bonifield. That article, which also contained a hyperlink connecting the reader back to the June 1 Article, also repeated the false and defamatory statements that “the [St. Mary’s pediatric cardiac surgery] program had a mortality rate for open heart surgeries three times higher than the national average” and that that mortality rate was “12.5% from 2011 to 2013” whereas “[n]ationally, the average mortality rate for babies having open heart surgery from 2010 to 2013 was 3.3%.” Moreover, and reflective of the CNN Defendants’ motives in publishing these articles, the article in fact *took credit* for the

⁵⁴ Elizabeth Cohen & John Bonifield, “CNN Report on High Mortality Rate for Babies at Florida Hospital Leads to Inquiry” CNN (June 5, 2015), *available at* <http://www.cnn.com/2015/06/05/health/st-marys-medical-center-investigation>.

Program suspending operations, proclaiming that St. Mary's "suspended elective pediatric heart surgeries after a CNN investigation calculated that the program had a mortality rate for open heart surgeries three times higher than the national average."⁵⁵

- (f) On June 8, 2015, the CNN Defendants also published on CNN.com and on CNN's television program "Newsroom" a companion video report titled "Hospital Suspends Elective Heart Surgeries on Children After CNN Investigation." That video also repeated the false and defamatory statement that a "CNN investigation found mortality rate 3x higher than [the] [national] average."⁵⁶
- (g) On June 9, 2015, the CNN Defendants published the article described above titled "What to Know About St. Mary's Children's Heart Surgery Mortality Rates." This article, which contained a hyperlink connecting the reader back to the June 1 Article, repeated the false and defamatory statements that Dr. Black and the Program had a "12.5% mortality rate" as compared to a national average rate of 3.3% cited by the Society of Thoracic Surgeons."⁵⁷

⁵⁵ Elizabeth Cohen & John Bonifield, "Hospital Suspends Elective Heart Surgeries on Children After CNN Investigation," CNN (June 8, 2015), *available at* <http://www.cnn.com/2015/06/08/health/hospital-suspends-elective-heart-surgeries-on-children-after-cnn-investigation>.

⁵⁶ Elizabeth Cohen & John Bonifield, Video: "St. Mary's Hospital Suspends Pediatric Heart Surgeries," CNN (June 8, 2015), *available at* <http://www.cnn.com/videos/us/2015/06/08/hospital-suspends-open-heart-surgeries-cohen-nr.cnn>.

⁵⁷ Elizabeth Cohen & John Bonifield, "What to Know About St. Mary's Children's Heart Surgery Mortality Rates," CNN (June 9, 2015), *supra* note 43.

- (h) On June 26, 2015, the CNN Defendants published on CNN.com an article titled “Patient Safety Evaluated at St. Mary’s Hospital.” This article, too, contained a hyperlink connecting the reader back to the June 1 Article—but not to the June 9 Article—and repeated the false and defamatory statements that “CNN found [that St. Mary’s pediatric cardiac surgery program] had a high mortality rate for pediatric open heart surgeries from 2011-2013” and “that from 2011-2013, the raw mortality rate at St. Mary’s for pediatric open heart surgeries was 12.5%, which is more than three times higher than the national average for such surgeries during that time.”⁵⁸
- (i) On June 26, 2015, Defendants CNN and Cohen also published on CNN.com and on CNN’s television program “New Day” a companion video report titled “Patient Safety Evaluated at St. Mary’s Hospital.” In that report, Christi Paul repeated the following false and defamatory statement that St. Mary’s pediatric cardiac surgery program has “a mortality rate for pediatric open-heart surgeries from 2011 to 2013 [that] was three times the national average.”⁵⁹
- (j) On August 17, 2015, the CNN Defendants published on CNN.com an article titled “CNN Report on Florida Hospital Leads to Heart Surgery Program Closure.” That article contained a hyperlink connecting the

⁵⁸ Elizabeth Cohen, “Patient Safety Evaluated at St. Mary’s Hospital,” CNN (June 26, 2015), *available at* <http://www.cnn.com/2015/06/26/health/st-marys-hospital-heart-surgeries-evaluated>.

⁵⁹ Elizabeth Cohen, Video: “Patient Safety Evaluated at St. Mary’s Hospital,” CNN (June 26, 2015), *available at* <http://www.cnn.com/2015/06/26/health/st-marys-hospital-heart-surgeries-evaluated>.

reader back to the June 3 Article, and yet again repeated the false and defamatory statement that “from 2011 to 2013, the [St. Mary’s pediatric cardiac surgery] program had a 12.5% mortality rate for open heart surgeries, which is more than three times the national average.” Moreover, and reflective of the CNN Defendants’ motives in publishing these articles, the article in fact *took credit for* the Program being shut down.⁶⁰

- (k) On August 17, 2015, the CNN Defendants also published on CNN.com and on CNN’s prime-time television program “Anderson Cooper 360°” a companion video report titled “Programs Shutting Down at St. Mary’s Medical Center.” That report, coming nearly a month after the CNN Defendants’ previous report on Dr. Black and St. Mary’s, repeated significant portions of the June 1 Video Report and refocused the attention of a prime-time national audience on the CNN Defendants’ “investigation” of and stories about Dr. Black and St. Mary’s. Reflective of the CNN Defendants’ motives in publishing these videos and articles, the video report in fact *took credit for* the Program being shut down.
- (l) On January 13, 2016, the CNN Defendants published on CNN.com an article titled “After CNN Investigation, A Push to Halt Child Heart Surgery at Some Hospitals,” authored by Defendants Cohen and Bonifield. That article, which also contained a hyperlink connecting the

⁶⁰ Elizabeth Cohen, John Bonifield & Dana Ford, “CNN Report on Florida Hospital Leads to Heart Surgery Program Closure,” CNN (Aug. 17, 2015), *available at* <http://www.cnn.com/2015/08/17/health/st-marys-medical-center-investigation>.

reader back to the June 1 Article, repeated the false narrative and implications that Dr. Black is an incompetent, dishonest, and inexperienced doctor who caused the death of at least one baby by ineptly performing surgery on her and providing a level of care to that patient below the appropriate standard of care and by falsely claiming that Dr. Black “caused” “a problem” with a patient and made “lethal mistakes” on a patient who “didn’t have to die.”⁶¹

- (m) On January 13, 2016, the CNN Defendants also published on CNN.com an article titled “Heart Doctors Outraged Florida Dumps Hospital Standards After Big Gifts to GOP,” authored by Defendant Cohen and Katherine Grise. That article, which also contained a hyperlink connecting the reader back to the June 1 Article and June 3 Article, repeated the false narrative and implications that Dr. Black and the St. Mary’s Program “failed” to perform pediatric heart surgeries with the requisite standard of care, and further suggested that Tenet Healthcare, which owns and operates St. Mary’s, made significant political contributions in order to push the State of Florida to abandon pediatric cardiac surgical standards of care. However, as the State of Florida has made clear, “[t]he impetus for

⁶¹ Elizabeth Cohen & John Bonifield, “After CNN Investigation, A Push to Halt Child Heart Surgery at Some Hospitals,” CNN (Jan. 13, 2016), *available at* <http://www.cnn.com/2016/01/13/health/jama-childrens-heart-surgery-hospitals>.

the rule change was a lack of statutory authority,” not monetary contributions from anyone.⁶²

167. Moreover, in an effort to further increase readership and viewership of their defamatory articles and videos about Dr. Black, Defendant CNN issued “Breaking News Alerts” and caused links to the articles to appear at the top of the main CNN.com webpage and to be “pushed” to users of CNN’s mobile applications. Upon information and belief, Defendant CNN issued multiple “Breaking News Alerts” regarding articles and/or videos about Dr. Black.

168. Each of the separate publications described above in paragraph 166 reached a new audience of readers and/or viewers.

169. The narrative conveyed by the CNN Defendants through their series of articles about Dr. Black and St. Mary’s—that Dr. Black was incompetent and caused the deaths of numerous babies—is false and defamatory.

170. In response to the CNN Defendants’ January 13, 2016 Articles, the Florida Agency for Health Care Administration (“AHCA”) issued another statement—titled “Setting the Record Straight”—lambasting CNN’s “inaccurate” reporting and detailing the falsity of allegations made by CNN in its January 13, 2016 “Doctors Outraged” article.

171. As a result of these publications, the CNN Defendants maintained the prominence of their false and defamatory statements about Dr. Black, conveyed them to new and ever greater audiences, and dramatically increased the harm to Dr. Black caused by their false and defamatory statements.

⁶² Press Release, Florida Department of Health, “Setting the Record Straight” (Jan 14, 2016) (explaining that “[i]n the case of the rule 64C-4.003, standards related to operation of pediatric cardiac programs, the department has not been given the necessary legislative authority to conduct these activities—inspect records, facilities or personnel; establish standards that hospitals with a pediatric cardiac program meet; or enforce standards should a hospital fall below such standards”), *available at* <http://www.floridahealth.gov/newsroom/2016/01/011416-setting-record-straight.html>.

**The CNN Defendants Separately Defame Dr. Black And
Magnify The Impact Of Their Defamatory Articles And Video Reports
Through A Series of Social Media Posts**

172. Apart from the highly damaging false and defamatory statements in their Articles and Video Reports, the CNN Defendants separately defamed Dr. Black through a series of written posts on the social media platforms Twitter and Facebook, which they used to repeat their defamatory statements about Dr. Black and as part of a conscious and coordinated effort to promote their defamatory articles and video reports to an even larger audience.

173. The CNN Defendants publicized their defamatory statements about Dr. Black on social media repeatedly beginning on June 1, 2015 and continuing for months using their official CNN and CNN-affiliated social media accounts.



Sampling of the CNN Defendants' Social Media Posts (Screenshots)

Posts ("Tweets") from CNN's Main Twitter Account

174. Defendant CNN promoted the CNN Defendants' defamation of Dr. Black and separately defamed Dr. Black through its main CNN Twitter account, @CNN. The @CNN

Twitter account is a verified account of CNN and linked to CNN.com.⁶³ As of February 12, 2016, the @CNN Twitter account has 23.1 million followers.⁶⁴

175. Defendant CNN publicized the CNN Defendants' defamatory June 1 Article and Video Report to its followers through a June 1, 2015 tweet ("June 1 CNN Tweet") on the main @CNN Twitter account that included a link to the June 1 Article and Video Report. Defendant CNN separately defamed Dr. Black through that tweet by making the false and defamatory statement that "At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average" (emphasis in original). That tweet has been retweeted more than 245 times and "favorited" at least 146 times.⁶⁵

Posts on CNN's Main Facebook Page

176. Defendant CNN also promoted the CNN Defendants' defamation of Dr. Black through the main CNN Facebook account. The CNN Facebook account is a verified account of CNN and linked to CNN.com,⁶⁶ and as of February 12, 2016 has over 20.7 million "likes."⁶⁷

177. Defendant CNN publicized the CNN Defendants' defamatory August 17 Article and Video Report to its followers through an August 17, 2015 Facebook post ("August 17 CNN Facebook Post") on the main CNN Facebook page that included a link to the defamatory August 17 Article and Video Report. The August 17 CNN Facebook Post has been "liked" by more than 2,795 Facebook members, "shared" more than 650 times, and commented on at least 200 times.

⁶³ <https://twitter.com/CNN>.

⁶⁴ *Id.*

⁶⁵ CNN, Tweet (June 1, 2015, 5:54pm).

⁶⁶ <https://www.facebook.com/cnn>.

⁶⁷ *Id.*

Posts (“Tweets”) from CNN’s Breaking News Twitter Account

178. Defendant CNN further promoted the CNN Defendants’ defamation of Dr. Black through its CNN Breaking News Twitter account, @CNNbrk. The @CNNbrk Twitter account is a verified account of CNN and is linked to CNN.com.⁶⁸ As of February 12, 2016, the @CNNbrk Twitter account has over 34.6 million followers.⁶⁹

179. Defendant CNN publicized the CNN Defendants’ defamatory June 8 Article and Video Report to its followers through a June 8, 2015 tweet (“June 8 CNN Tweet”) on its @CNNbrk account that included a link to the defamatory June 8 Article and Video Report. The June 8 CNN Tweet has been retweeted more than 175 times and “favorited” more than 160 times. Defendant CNN also publicized the CNN Defendants’ defamatory August 17 Article and Video Report to its followers through an August 17, 2015 tweet (the “August 17 CNN Tweet”) on its @CNNbrk account that included a link to the defamatory August 17 Article and Video Report. The August 17 CNN Tweet has been retweeted more than 375 times and “favorited” more than 260 times.

Posts (“Tweets”) from CNN Health’s Twitter Account

180. Defendants CNN and, upon information and belief, Defendant Cohen have extensively promoted their defamation of Dr. Black and separately defamed Dr. Black through the CNN Health Twitter account, @CNNHealth. The @CNNHealth Twitter account is a verified account of CNN and is linked to CNN.com.⁷⁰ As of February 12, 2016, the

⁶⁸ <https://twitter.com/cnnbrk>.

⁶⁹ *Id.*

⁷⁰ <https://twitter.com/cnnhealth>.

@CNNHealth Twitter account has over 387,000 followers.⁷¹ Defendant CNN lists Defendant Cohen as a “member” of the “CNN Medical Tweeters” group on the CNN Health Twitter account and, upon information and belief, Defendant Cohen authors, edits, publishes, and/or approves posts made on that account.

181. Defendant CNN, and, upon information and belief, Defendant Cohen, publicized the CNN Defendants’ defamatory articles and video reports and separately defamed Dr. Black through a series of tweets from the @CNNHealth Twitter account from June 1, 2015 through at least August 17, 2015:

- (a) A June 1, 2015 tweet (“June 1 CNN Health Tweet”) on the @CNNHealth Twitter account that included a link to the June 1 Article and Video Report. Defendant CNN and, upon information and belief, Defendant Cohen also separately defamed Dr. Black through that tweet by making the false and defamatory statement that “At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average” (emphasis in original). The June 1 CNN Health Tweet has been retweeted at least 23 times and “favorited” at least 10 times.⁷²
- (b) A June 2, 2015 tweet (“June 2 CNN Health Tweet”) on the @CNNHealth Twitter account that included a link to the June 1 Article and Video Report. The June 2 CNN Health Tweet has been retweeted at least 11 times and “favorited” at least 6 times.

⁷¹ *Id.*

⁷² CNN Health, Tweet (June 1, 2015, 5:27pm).

- (c) A June 4, 2015 tweet (“June 4 CNN Health Tweet”) on the @CNNHealth Twitter account that included a link to the June 3 Article and Video Report. The June 4 CNN Health Tweet has been retweeted at least 20 times and “favorited” at least 5 times.
- (d) A June 5, 2015 tweet (“June 5 CNN Health Tweet”) on the @CNNHealth Twitter account that included a link to the June 5 Article and Video Report. Defendant CNN, and, upon information and belief, Defendant Cohen also separately defamed Dr. Black through that tweet by making the false and defamatory statement that “St. Mary’s” had a “death rate” of “12.5%” compared to a “National Average” “death rate” of “3.3%.” The June 5 CNN Health Tweet has been retweeted at least 15 times and “favorited” at least 6 times.⁷³
- (e) A June 6, 2015 tweet (“June 6 CNN Health Tweet”) on the @CNNHealth Twitter account that included a link to the June 3 Article and Video Report. The June 6 CNN Health Tweet has been retweeted at least 14 times and “favorited” at least 8 times.
- (f) A June 8, 2015 tweet (“June 8 CNN Health Tweet”) on the @CNNHealth Twitter account that included a link to the June 5 Article and Video Report. Defendant CNN and, upon information and belief, Defendant Cohen also separately defamed Dr. Black through that tweet by making the false and defamatory statement that “At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average”

⁷³ CNN Health, Tweet (June 5, 2015, 2:09pm).

(emphasis in original). The June 5 CNN Health Tweet has been retweeted at least 22 times and “favorited” at least 7 times.⁷⁴

- (g) An August 17, 2015 tweet (“August 17 CNN Health Tweet”) on the @CNNHealth Twitter account that included a link to the August 17 Article and Video Report. The August 17 CNN Health Tweet has been retweeted at least 51 times and “favorited” at least 69 times.

Posts on CNN Health’s Main Facebook Page

182. Defendant CNN and, upon information and belief, Defendant Cohen have further promoted their defamation of Dr. Black and separately defamed Dr. Black through CNN Health’s Facebook account. The CNN Health Facebook account is a verified account of CNN and linked to CNN.com/health.⁷⁵ As of February 12, 2016, the CNN Health Facebook account has over 252,300 likes.⁷⁶ Upon information and belief, Defendant Cohen authors, edits, publishes, and/or approves posts made on that account.

183. Defendant CNN and, upon information and belief, Defendant Cohen publicized the CNN Defendants’ defamatory articles and video reports and separately defamed Dr. Black through a series of posts on the CNN Health Facebook account from June 1, 2015 through at least June 27, 2015:

- (a) A June 1, 2015 Facebook Post (“June 1 CNN Health Facebook Post”) on the CNN Health Facebook account that included a link to the June 1 Article and Video Report. Defendant CNN and, upon information and

⁷⁴ CNN Health, Tweet (June 8, 2015, 10:50am).

⁷⁵ <https://www.facebook.com/CNNHealth>.

⁷⁶ *Id.*

belief, Defendant Cohen also separately defamed Dr. Black through that Facebook post by making the false and defamatory statement that “At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average” (emphasis in original) and the false and defamatory statement that “The mortality rate for babies having heart surgery at St. Mary’s Medical Center was three times the national average from 2011-2013” in that post. The June 1 CNN Health Facebook Post has been “liked” at least 47 times, “shared” at least 20 times, and commented on.⁷⁷

(b) A June 2, 2015 Facebook Post (“June 2 CNN Health Facebook Post”) on the CNN Health Facebook account that included a link to the June 1 Article and Video Report. Defendant CNN, and, upon information and belief, Defendant Cohen also separately defamed Dr. Black through that Facebook post by making the false and defamatory statement that “The mortality rate for babies having heart surgery at St. Mary’s Medical Center was three times the national average from 2011-2013.” The June 2 CNN Health Facebook Post has been “liked” at least 13 times, “shared,” and commented on.⁷⁸

(c) A June 2, 2015 Facebook Video Post (“June 2 CNN Health Facebook Video Post”) on the CNN Health Facebook account that included a link to the June 1 Article and Video Report. The June 2 CNN Health Facebook

⁷⁷ CNN Health, Facebook Post (June 1, 2015).

⁷⁸ CNN Health, Facebook Post (June 2, 2015).

Video Post has been “liked” at least 23 times, “shared” at least 19 times, and commented on.

- (d) A June 4, 2015 Facebook Post (“June 4 CNN Health Facebook Post”) on the CNN Health Facebook account that included a link to the June 3 Article and Video Report. The June 4 CNN Health Facebook Post has been “liked” at least 56 times, “shared” at least 17 times, and commented on at least 8 times.
- (e) A June 5, 2015 Facebook Post (“June 5 CNN Health Facebook Post”) on the CNN Health Facebook account that included a link to the June 5 Article and Video Report. Defendant CNN and, upon information and belief, Defendant Cohen also separately defamed Dr. Black through that Facebook post by making the false and defamatory statement that “St. Mary’s” had a “death rate” of “12.5%” compared to a “National Average” “death rate” of “3.3%.” The June 5 CNN Health Facebook Post has been “liked” at least 24 times, “shared” at least 4 times, and commented on at least 4 times.⁷⁹
- (f) A June 8, 2015 Facebook Post (“June 8 CNN Health Facebook Post”) on the CNN Health Facebook account that included a link to the June 8 Article and Video Report. Defendant CNN and, upon information and belief, Defendant Cohen also separately defamed Dr. Black through that Facebook post by making the false and defamatory statement that “St. Mary’s Medical Center has suspended elective pediatric heart

⁷⁹ CNN Health, Facebook Post (June 5, 2015).

surgeries after a CNN investigation calculated that the program had a mortality rate for open heart surgeries three times higher than the national average.” The June 8 CNN Health Facebook Post has been “liked” at least 57 times, “shared” at least 16 times, and commented on.⁸⁰

- (g) A June 27, 2015 Facebook Post (“June 27 CNN Health Facebook Post”) on the CNN Health Facebook account that included a link to the June 26 Article and Video Report. The June 27 CNN Health Facebook Post has been “liked” at least 31 times and “shared.”

Posts (“Tweets”) from Elizabeth Cohen’s Twitter Account

184. Defendant Cohen likewise extensively promoted the CNN Defendants’ defamation of Dr. Black and separately defamed Dr. Black through her Twitter account, @elizcohencnn. The @elizcohencnn Twitter account is a verified account of Defendant Cohen’s and notes her affiliation with CNN.⁸¹ As of February 12, 2016, the @elizcohencnn Twitter account has over 20,075 followers.⁸²

185. Defendant Cohen publicized the CNN Defendants’ defamatory articles and video reports and separately defamed Dr. Black through a series of tweets from her Twitter account from June 1, 2015 through at least June 27, 2015:

- (a) A June 1, 2015 tweet (“First June 1 Cohen Tweet”) from her Twitter account that included a link to the June 1 Article and Video Report. The

⁸⁰ CNN Health, Tweet (June 8, 2015, 10:50am).

⁸¹ <https://twitter.com/elizcohencnn>.

⁸² *Id.*

First June 1 Cohen Tweet has been retweeted at least 28 times and “favorited” at least 16 times.

- (b) A second June 1, 2015 tweet (“Second June 1 Cohen Tweet”) from her Twitter account that included a link to the June 1 Article and Video Report. Defendant Cohen, with the encouragement and approval of Defendant CNN, also separately defamed Dr. Black through this tweet by making the false and defamatory statement that “At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average.” (emphasis in original). The Second June 1 Cohen Tweet has been retweeted at least 42 times and “favorited” at least 24 times.⁸³
- (c) A June 2, 2015 tweet (“June 2 Cohen Tweet”) that included a link to the June 1 Article and Video Report. The June 2 Cohen Tweet has been retweeted at least 18 times and “favorited” at least 15 times.
- (d) A June 3, 2015 tweet (“June 3 Cohen Tweet”) that included a link to the June 3 Article and Video Report. The June 3 Cohen Tweet has been retweeted at least 17 times and “favorited” at least 12 times.
- (e) A June 9, 2015 tweet (“June 9 Cohen Tweet”) that included a link to the June 3 Article and Video Report. The June 9 Cohen Tweet has been retweeted at least 7 times and “favorited” at least 4 times.
- (f) A June 27, 2015 tweet (“June 27 Cohen Tweet”) that included a link to the June 26 Article and Video Report. The June 27 Cohen Tweet has been retweeted at least 7 times and “favorited” at least 5 times.

⁸³ Elizabeth Cohen, Tweet (June 1, 2015, 8:17pm).

Posts on Elizabeth Cohen's Facebook Page

186. Defendant Cohen also extensively promoted the CNN Defendants' defamation of Dr. Black through her Facebook account from June 1, 2015 through at least June 27, 2015. Defendant Cohen's Facebook account notes her affiliation with CNN.⁸⁴ As of February 12, 2016, Defendant Cohen's Facebook account has 387 followers.⁸⁵ Defendant Cohen's posts through her Facebook account include:

- (a) A June 2, 2015 post ("First June 2 Cohen Facebook Post") that included a link to the June 1 Article and Video Report. The First June 2 Cohen Facebook Post has been "liked" at least 35 times, "shared" at least 13 times, and commented on at least 14 times.
- (b) A second June 2, 2015 post ("Second June 2 Cohen Facebook Post") that included a link to the June 1 Article and Video Report. Defendant Cohen, with the encouragement and approval of Defendant CNN also separately defamed Dr. Black through this post by making the false and defamatory statement that "At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average." (emphasis in original). The Second June 2 Cohen Facebook Post has been "liked" at least 37 times, "shared" at least 14 times, and commented on at least 19 times.⁸⁶

⁸⁴ <https://www.facebook.com/elizabeth.cohen.9028>.

⁸⁵ *Id.*

⁸⁶ Elizabeth Cohen, Facebook Post (June 2, 2015).

- (c) A June 3, 2015 post (“June 3 Cohen Facebook Post”) that included a link to the June 3 Article and Video Report. The June 3 Cohen Facebook Post has been “liked” at least 39 times, “shared” at least 2 times, and commented on at least 20 times.
- (d) A June 10, 2015 post (“June 10 Cohen Facebook Post”) that included a link to the June 9 Article and Video Report. The June 10 Cohen Facebook Post has been “liked” at least 46 times, “shared” at least 13 times, and commented on at least 10 times.
- (e) A June 27, 2015 post (“June 27 Cohen Facebook Post”) that included a link to the June 26 Article and Video Report. The June 27 Cohen Facebook Post has been “liked” at least 32 times, “shared” at least 2 times, and commented on at least 3 times.

Posts on John Bonifield’s Facebook Page

187. Defendant Bonifield also promoted the CNN Defendants’ defamation of Dr. Black through his Facebook account. Defendant Bonifield’s Facebook account notes his affiliation with Turner Broadcasting, the parent company of CNN.⁸⁷ As of February 12, 2016, Defendant Bonifield has at least 541 Facebook “friends.”⁸⁸

188. Defendant Bonifield publicized the CNN Defendants’ defamatory June 1 Article and Video Report to his “friends” through two June 2, 2015 Facebook posts (“June 2 Bonifield Facebook Posts”), one of which embedded the June 1 Video Report and both of which included links to the June 1 Article and Video Report.

⁸⁷ <https://www.facebook.com/john.bonifield>.

⁸⁸ *Id.*

189. Defendant Bonifield also separately defamed Dr. Black through his Facebook posts by making the false and defamatory statement that “[a] Florida hospital [St. Mary’s] is still operating on tiny babies’ hearts despite a high death rate.” The June 2 Bonifield Facebook Posts have been “liked” at least 10 times.⁸⁹

Post on the Anderson Cooper 360° Facebook Page

190. Defendants CNN and Cooper also promoted the CNN Defendants’ defamation of Dr. Black and separately defamed Dr. Black through the Anderson Cooper 360° Facebook account. The Anderson Cooper 360° Facebook account is a verified account of CNN and linked to CNN.com/ac360. As of February 12, 2016, the Anderson Cooper 360° Facebook account has over 1.2 million “likes.”

191. Upon information and belief, Defendant Cooper authors, approves, and/or has control over the posts made through the Anderson Cooper 360° Facebook account.

192. Defendants CNN and Cooper publicized the CNN Defendants’ defamatory June 1 Article and Video Report to its followers through a June 1, 2015 Facebook Post (“June 1 AC360 Facebook Post”) on the Anderson Cooper 360° Facebook account that included a link to the June 1 Article and Video Report. Defendants CNN and Cooper also separately defamed Dr. Black through that Facebook post by making the false and defamatory statement that “[t]he mortality rate for babies having heart surgery at St. Mary’s Medical Center was three times the national average from 2011-2013.” The June 1 AC360 Facebook Post has been “liked” at least 595 times, “shared” at least 329 times, and commented on at least 111 times.⁹⁰

⁸⁹ John Bonifield, Facebook Post (June 2, 2015).

⁹⁰ Anderson Cooper 360°, Facebook Post (June 1, 2015).

Posts (“Tweets”) from Christi Paul’s Twitter Account

193. Defendant CNN and CNN employee and non-party Christi Paul also promoted the CNN Defendants’ defamation of Dr. Black and repeated the CNN Defendants’ defamatory statements about Dr. Black through her Twitter account, @Christi_Paul. The @Christi_Paul Twitter account is a verified account of Ms. Paul’s and notes her affiliation with CNN.⁹¹ As of February 12, 2016, the @Christi_Paul Twitter account has over 33,940 followers.⁹²

194. Defendant CNN and Ms. Paul publicized the CNN Defendants’ defamatory June 1 Article and Video Report to Ms. Paul’s followers through a June 6, 2015 tweet (“June 6 Paul Tweet”) on Ms. Paul’s Twitter account that included a link to the June 1 Article and Video Report. Defendant CNN and Ms. Paul also repeated the false and defamatory statement about Dr. Black that “[t]he mortality rate for babies having heart surgery at St. Mary’s Medical Center was three times the national average from 2011-2013.” The June 6 Paul Tweet has been retweeted at least 7 times and “favorited” at least 13 times.⁹³

**Defendants’ Defamatory Statements Are Repeated And Republished
In Other Media Outlets, Compounding The Harm To Dr. Black**

195. Defendants’ defamation of Dr. Black set off a media firestorm.

196. Local and national media outlets across the country have republished Defendants’ false and defamatory statements. For example:

- (a) On June 2, 2015, the *Palm Beach Post* reported on the “blistering CNN report” that “took aim at Dr. Michael Black.” The *Palm Beach Post* article, headlined “CNN Puts St. Mary’s Infant Heart Surgery Deaths at 3x

⁹¹ https://twitter.com/christi_paul.

⁹² *Id.*

⁹³ Christi Paul, Tweet (June 6, 2015, 4:33am).

National Average,” highlighted the CNN Defendants’ false and defamatory statements, declaring that “CNN reported St. Mary’s performed 48 open heart surgeries on children and babies from 2011 to 2013. Six babies did not survive—a 12.5 percent death rate. The national average is 3.3 percent, according to The Society for Thoracic Surgeons.” The *Post* further expressly repeated that “CNN reported that the mortality rate at St. Mary’s was three times above the national average.”⁹⁴

- (b) On June 5, 2015, *USA TODAY* repeated the CNN Defendants’ defamatory claims, reporting that “CNN calculated the mortality rate for open heart surgeries [at St. Mary’s] at 12.5%, triple the national average.”⁹⁵
- (c) On June 5, 2015, *Modern Healthcare*, a leading medical industry news publication, reported that “[t]his week, CNN reported on a seemingly high mortality rate at St. Mary’s Medical Center. The facility instituted its pediatric cardiac surgery program in 2011 under the direction of Dr. Michael Black. According to the CNN report, the hospital’s death rate of 12.5% was three times the national average.”⁹⁶
- (d) The *Palm Beach Post* likewise republished and repeated Defendant Robinson’s claim that Dr. Black “is killing people,” while noting her

⁹⁴ Sonja Isgar & John Pacenti, “CNN Puts St. Mary’s Infant Heart Surgery Deaths at 3x National Average,” *Palm Beach Post* (June 2, 2015), available at <http://www.palmbeachpost.com/news/news/local/pbc-family-supports-dr-black-despite-cnn-report/nmTY2>.

⁹⁵ Michael Winter, “Fla. Hospital Probed Over Babies’ Deaths After Heart Surgery,” *USA TODAY* (June 5, 2015; updated June 7, 2015), available at <http://www.usatoday.com/story/news/2015/06/05/florida-hospital-investigation-babies-deaths-heart-report/28561097>.

⁹⁶ Sabriya Rice, “CMS to Investigate Pediatric heart Surgery Deaths at Florida Hospital,” *Modern Healthcare* (June 5, 2015), available at <http://www.modernhealthcare.com/article/20150605/NEWS/150609928>.

connection with the CNN Defendants' defamatory June 1 Article, and reporting that Defendant Robinson went so far in her crusade against Dr. Black as to acquire a St. Mary's visitor's pass in order approach Dr. Black's patients in the hospital and even to show up at the home of a family member of one of Dr. Black's patients at night in order to disparage Dr. Black to them and admonish the patient's family to "watch[] CNN" to see the CNN Defendants' reports on Dr. Black.⁹⁷

197. The CNN Defendants intentionally sought to create, and succeeded in creating, this media firestorm over Dr. Black and St. Mary's. Moreover, the CNN Defendants intentionally fueled the media firestorm that their original article and news report created by continuing to publish numerous articles, video reports, and social media posts that repeated their defamatory claims about Dr. Black for months following the publication of their June 1 Article and Video Report. Moreover, the CNN Defendants intentionally perpetuated the media firestorm over Dr. Black and St. Mary's by publishing yet further articles about them in January 2016. The CNN Defendants' goal in doing so was to garnered additional attention for their defamatory article and video report in the local and national press. Their efforts were successful. For example:

- (a) On August 18, 2015, the *New York Daily News* published an article that linked to a CNN article published on August 17, 2015 and noted that "CNN reported that the pediatric cardiothoracic surgery program [at St. Mary's] had a 12.5% mortality rate for open heart surgeries and said that

⁹⁷ John Pacenti, "'Heart Mom' Wages War Against St. Mary's," *Palm Beach Post*, (July 2, 2015), available at <http://www.mypalmbeachpost.com/news/news/heart-mom-wages-war-against-st-marys/nmqyQ>.

at least nine babies died after having heart surgery at the hospital since 2011.”⁹⁸

- (b) Also on August 18, 2015, the *International Business Times* published a report that linked to a CNN article published on August 17, 2015 and repeated the CNN Defendants’ claim that St. Mary’s “mortality rate of open heart surgeries is more than three times the national average.”⁹⁹
- (c) On that same date, Reuters also published an article that cited and linked to CNN’s June 1 Article and repeated the CNN Defendants’ false and defamatory claim that the pediatric cardiac surgery program at St. Mary’s had a “mortality rate [of] nearly 13 percent.”¹⁰⁰
- (d) On December 24, 2015, the *Palm Beach Post* published an article identifying the reports about Dr. Black and the St. Mary’s Program claiming that they had a 12.5% death rate as one of the “stories that captivated Palm Beach County” in 2015.”¹⁰¹
- (e) On January 17, 2016, a post on the *Training Family Doctors* blog quoted and linked to the June 1 Article and repeated the CNN Defendants’ claims

⁹⁸ Laurie Hanna, “Florida Hospital Shuts Down Child Open Heart Surgery Program, Blames ‘Inaccurate’ Media Reports, *N.Y. Daily News* (Aug. 18, 2015), available at <http://www.nydailynews.com/news/national/florida-hospital-closes-child-open-heart-surgery-program-article-1.2329104>.

⁹⁹ Vishakha Sonawane, “Florida Hospital Closes Open Heart Surgery Program After Report Of High Infant Mortality Rate,” *Int’l Bus. Times* (Aug. 18, 2015), available at <http://www.ibtimes.com/florida-hospital-closes-open-heart-surgery-program-after-report-high-infant-mortality-2057732>.

¹⁰⁰ Reuters, “Child heart surgery program in Florida closes after report of 9 infant deaths,” *RT Online* (Aug. 18, 2015), <https://www.rt.com/usa/312700-infant-deaths-heart-surgery-program>.

¹⁰¹ Palm Beach Post, “Stories That Captivated Palm Beach County,” *Palm Beach Post* (Dec. 24, 2015), <http://theinsider.blog.mypalmbeachpost.com/2015/12/24/stories-that-captivated-palm-beach-county-in-2015> (capitalization modified) (citing and linking to Sonja Iser & John Pacenti, “CNN Puts St. Mary’s Infant Heart Surgery Deaths at 3x National Average,” *Palm Beach Post Insider Blog* (June 2, 2015), *supra* note 94 (citing and linking to the June 1 Article)).

that the St. Mary's Program "had an extraordinarily high death rate," that pediatric cardiac surgeries "can be very lucrative, bringing in over \$500,000 for each operation," and that the St. Mary's Program was a "mess," and, based on the CNN Defendants' defamatory statements, likened the St. Mary's Program to a seller of snake oil.¹⁰²

**Dr. Black Has Suffered Significant Reputational, Emotional,
And Economic Harm As A Result of Defendants' Statements**

198. Defendants' false and defamatory statements about Dr. Black have caused him significant damage.

199. Dr. Black has suffered severe reputational harm as a result of Defendants' false and defamatory statements. Defendants' false, malicious, and defamatory statements regarding Dr. Black impugn his well-earned reputation as leading medical doctor and pediatric cardiac surgeon, an entrepreneur, and a philanthropist—and they undermine public confidence in his competence, ethics, and abilities in these areas. Dr. Black has spent a lifetime building his reputation, and Defendants' statements falsely and wrongfully destroyed his strong reputation in these and other areas. Following the CNN Defendants' publication of their defamatory statements about Dr. Black, Dr. Black has received calls from around the world questioning his reputation.

200. Dr. Black's reputational harm is presumed because Defendants' statements about him are defamatory *per se* because those statements—accusing Dr. Black of treating "[b]abies as sacrificial lambs," making "[a] total mess with newborn babies," performing surgical procedures he was not competent to perform, "importing," "mangl[ing]," "butcher[ing]," and "killing"

¹⁰² "Et qui vendit pellucidum," *Training Family Doctors Blog* (Jan. 17, 2016), <https://usafamilymedicine.wordpress.com/tag/st-marys-palm-beach-fl>.

babies, and having more than three times the national average mortality rate for heart surgeries and open-heart surgeries that he performed—accuse Dr. Black of committing crimes and engaging in conduct unfit for a medical doctor and surgeon.

201. Defendants’ false, malicious, and defamatory statements regarding Dr. Black, and the republication of those statements by other media outlets, distort the public record regarding Dr. Black’s competence as a medical doctor and surgeon.

202. Defendants’ false, malicious, and defamatory statements regarding Dr. Black have caused him to endure humiliation and verbal and written personal attacks. Because of the allegations made by Defendants, Dr. Black has been the subject of excoriation by reporters, activists, columnists, editorial writers, and bloggers.

203. Defendants’ false, malicious, and defamatory statements regarding Dr. Black have undermined Dr. Black’s safety and have made him a target of threats of violence, causing him to justifiably fear for his and his family’s safety and to often refrain from going out in public for fear of harassment and violence. In one chilling instance, on June 12, 2015—shortly after Defendants’ defamatory articles and video reports were published—Dr. Black received a telephone call on his home telephone telling him that he would be “butchered just like [his] patients.” This threat was repeated via telephone on other occasions, and on numerous other occasions following the publication of Defendants’ defamatory statements people attempted to gain access to Dr. Black’s home and office.

204. Defendants’ false, malicious, and defamatory statements regarding Dr. Black have also caused him significant economic harm. As a direct result of Defendants’ defamatory statements, St. Mary’s has been forced to permanently close its pediatric cardiac surgery program, of which Dr. Black was the lead surgeon and Medical Director. In addition, because of Defendants’ defamatory statements and the outrage and backlash against Dr. Black that

Defendants knowingly caused, Dr. Black has lost the ability to continue to perform his trade as a pediatric cardiac surgeon and medical doctor. As a direct and proximate result of Defendants' defamatory statements, Dr. Black has had his fitness to practice medicine examined by the Florida Department of Health, has been threatened with loss of his medical license, and has lost funding for a start-up company he was working to launch. Dr. Black has also lost untold prospects for future employment.

205. Defendants' false, malicious, and defamatory statements have also caused Dr. Black to lose opportunities to pursue charitable and philanthropic endeavors.

206. Defendants' false, malicious, and defamatory statements have also caused Dr. Black to suffer emotionally and physically.

207. As a direct and proximate result of Defendants' false, malicious, and defamatory statements, Cigna terminated "all participating provider agreements" that Dr. Black had "with any Cigna affiliated company," and excluded Dr. Black from its "network of health care professionals. In effecting this termination on June 3, 2015, Cigna expressly cited "the serious quality of care concerns raised in a recent CNN report about you [Dr. Black]." As a result, Dr. Black was forced to defend himself against Defendants' allegations through a Cigna appeals process—through which Dr. Black was ultimately vindicated, but only after considerable efforts.

208. As a direct and proximate result of Defendants' false, malicious, and defamatory statements, multiple medical malpractice lawsuits have been initiated against Dr. Black and he has been forced to defend himself from charges that he engaged in professional malpractice and conduct incompatible with his profession.

209. Defendants' infliction of this damage on Dr. Black was intentional and outrageous.

The CNN Defendants Again Refuse to Retract or Correct Their False and Defamatory Statements

210. On January 26, 2016, counsel for Dr. Black wrote to the CNN Defendants on behalf of Dr. Black—following up on the earlier correspondence sent by Tenet Healthcare and St. Mary’s on behalf of Tenet Healthcare, St. Mary’s, and Dr. Black (*see supra* ¶¶ 89-106, 149-151, 158-163)—to yet again notify them that the statements about Dr. Black that they published in their series of articles, online video reports, television segments, and social media posts beginning on or about June 1, 2015—including their statements regarding Dr. Black’s and the St. Mary’s Program’s mortality rate, and their claims that Dr. Black treated “[b]abies as sacrificial lambs” and made “[a]total mess with newborn babies”—are false and defamatory.¹⁰³ That letter identified the specific statements in the CNN Defendants’ articles, online video reports, television segments, and social media post that are false and defamatory and/or give rise to false and defamatory implications about Dr. Black. The letter again requested the retraction of those statements.

211. Through that letter and the earlier correspondence to the CNN Defendants on behalf of Dr. Black, Dr. Black complied with Florida Statute § 770.01 *et seq.* by specifying the CNN Defendants’ defamatory statements and requesting their retraction or correction.

212. The CNN Defendants, by a February 5, 2015 letter from their attorney, again refused to retract or correct their defamatory statements about Dr. Black and instead sought to justify their publication.

¹⁰³ Letter from Elizabeth Locke to Cable News Network, Inc., Elizabeth Cohen, John Bonifield, Dana Ford, & Anderson Cooper (Jan. 26, 2016) (attached hereto as Exhibit I).

COUNT ONE – DEFAMATION
FOR STATEMENTS IN THE JUNE 1 “SECRET DEATHS” ARTICLE
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)

213. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

214. Defendants CNN, Cohen, and Bonifield published false and defamatory statements about Dr. Black in their June 1, 2015 article titled “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital” (the “June 1 Article”), which they published to a worldwide audience on the website CNN.com.

215. The June 1, 2015 Article contains the following false and defamatory statements of fact:

- (a) “By the end of 2013, the mortality rate for babies having heart surgery there [at St. Mary’s] was three times the national average.”
- (b) “From those numbers, CNN was able to calculate the death rate for open heart surgeries as 12.5%, more than three times the national average of 3.3% cited by the Society [of] Thoracic Surgeons.”
- (c) Dr. Black treated “[b]abies as sacrificial lambs.”
- (d) Dr. Black made “[a] total mess with newborn babies.”

216. These statements of fact are of and concerning Dr. Black. The June 1 Article makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average, and that it was Dr. Black who supposedly treated “[b]abies as sacrificial lambs” and made “[a] total mess with newborn babies.”

217. These statements are reasonably understood to be statements of and concerning Dr. Black and were in fact understood by persons reading them to be statements of and concerning Dr. Black.

218. These statements are reasonably understood to be statements of fact regarding Dr. Black and were reasonably understood by persons reading them to be statements of fact regarding Dr. Black.

219. These statements are false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons. Dr. Black has never treated "[b]abies as sacrificial lambs" and never made "[a] total mess with newborn babies."

220. These statements are defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from these statements is readily apparent. These statements would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

221. By publication of these statements, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

222. These statements are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

223. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they had knowledge that these statements were false or they published the statements with reckless disregard for their truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

224. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they published them even though they were specifically informed of their falsity numerous times, including in February 2015, over three months before they published the June 1 Article, when they were expressly told, among other things, that the data on which they were basing these statements “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

225. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they published them even though they were specifically informed in February 2015, over three months before they published the June 1 Article, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States) meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no

statistically significant difference between Dr. Black's and the Program's mortality rate and the national average mortality rate.

226. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

227. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

228. Defendants CNN, Cohen, and Bonifield continue to make the June 1 Article available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions following their publication of the article that their statements were false and defamatory, thereby further demonstrating that they published those statements with actual malice.

229. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory statements after they were specifically informed that these statements are false and defamatory and specifically asked to retract or correct them, thereby further demonstrating that they published those statements with actual malice.

230. Defendants CNN, Cohen, and Bonifield's publication of these false and defamatory statements was negligent at a minimum.

231. Defendants CNN, Cohen, and Bonifield made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

232. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish these false and defamatory statements or, if they did, they abused that privilege.

233. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the June 1 Article, they knew that these statements would be republished and disseminated to new, larger audiences.

234. In addition to injuries presumed by law, these defamatory falsehoods have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

235. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

236. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT TWO – DEFAMATION BY IMPLICATION
FOR THE JUNE 1 “SECRET DEATHS” ARTICLE
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)**

237. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

238. Defendants CNN, Cohen, and Bonifield published false and defamatory implications about Dr. Black in their June 1, 2015 article titled “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital” (the “June 1 Article”), which they published to a worldwide audience on the website CNN.com.

239. Through the June 1 Article, Defendants CNN, Cohen, and Bonifield created and published a false narrative about Dr. Black and falsely implied and suggested to readers of the article that Dr. Black is an incompetent, dishonest, and inexperienced doctor leading a surgical program in crisis and recklessly operating on young children to profit at the expense of children’s lives. Defendants CNN, Cohen, and Bonifield did this by juxtaposing photographs and out-of-context statements so as to link them and convey false messages about Dr. Black and intentionally choosing to publish statements by persons they knew would be strongly biased against Dr. Black and by deliberately phrasing statements so as to convey an image of Dr. Black as a lying, incompetent, unqualified surgeon. The Article did this by, among other things:

- (a) Prominently featuring and juxtaposing a photograph of Dr. Black beneath a subheading in boldface text stating “Babies as sacrificial lambs” and in proximity to photographs of babies on whom Dr. Black operated to make

the false and defamatory implication that Dr. Black treated babies—including those babies—as sacrificial lambs, that he performed surgery on them without the necessary expertise, that he performed surgery recklessly, wantonly, and/or with an improper standard of care, and that he was making “[a] total mess with newborn babies.”

- (b) Using the well-known and understood device of “scare quotes” to sarcastically refer to Dr. Black as “the newly arrived ‘superstar’ surgeon” at St. Mary’s.
- (c) Stating that “the hospital [St. Mary’s] their [the McCarthys’] baby was at was extremely inexperienced at doing such complicated heart surgeries on newborns” even though they knew that Dr. Black had performed thousands of successful, complicated pediatric cardiac surgeries.
- (d) Suggesting that any trust in Dr. Black was misplaced by stating: “Some of the parents now torture themselves. They trusted the cardiologists who referred them to St. Mary’s for surgery.”
- (e) Deliberately suggesting that Dr. Black lied about his qualifications and past surgical outcomes by stating, regarding a source they knew to be biased against Dr. Black, “She [the source] says she, too, was lied to.”
- (f) Deliberately suggesting that Dr. Black lied about his qualifications by stating that “[h]e [Dr. Black] *said* he had invented techniques for operating on tiny hearts,” when they knew that Dr. Black had in fact invented techniques for operating on tiny hearts.
- (g) Stating that “[a]s babies died—Pa’rish was the fifth to pass away—worried heart doctors in South Florida took notice and approached

[Dr. Gerold] Schiebler for advice,” when they knew that Dr. Black’s and St. Mary’s pediatric cardiac surgery program’s death rate was not statistically significantly different from the STS national average and that doctors throughout South Florida thus did not take—and could not have taken—notice at Dr. Black’s pediatric cardiac surgery mortality rate.

240. These defamatory implications are of and concerning Dr. Black. Indeed, the Article features a photograph of Dr. Black captioned “Dr. Michael Black, pediatric heart surgeon, St. Mary’s Medical Center.”

241. These defamatory implications are reasonably understood to be implications of and concerning Dr. Black and were in fact understood by persons reading the Article to be implications of and concerning Dr. Black.

242. These defamatory implications are reasonably understood to be implications of fact regarding Dr. Black and were reasonably understood by persons seeing them to be implications of fact regarding Dr. Black.

243. These implications are false. Dr. Black has never treated “[b]abies as sacrificial lambs” and has never performed surgery recklessly, wantonly, and/or with anything less than with care that meets or exceeds the standard of care. Dr. Black is a highly-trained surgeon, did not lie about his qualifications or surgical results, and did not perform these surgeries recklessly and/or wantonly.

244. These implications are defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from these implications are readily apparent. These implications would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

245. By publication of these implications, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

246. These defamatory implications are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

247. Defendants CNN, Cohen, and Bonifield published these defamatory implications with actual malice in that they had knowledge that they were false or they published them with reckless disregard for their truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

248. Defendants CNN, Cohen, and Bonifield published these defamatory implications with actual malice in that they published them even though they were specifically informed that Dr. Black is an exemplary surgeon and the performance and results of St. Mary's pediatric cardiac surgery program, led by Dr. Black, the head of that Program, were highly satisfactory, earning a two-star rating along with all other such programs in the State of Florida and 78 of the other 95 programs receiving STS star ratings nationwide.

249. Defendants CNN, Cohen, and Bonifield published these defamatory implications with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of these defamatory implications.

250. Defendants CNN, Cohen, and Bonifield continue to make the June 1 Article containing these defamatory implications available to a nationwide and global audience on

CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions following their publication of the article that their implications were false and defamatory, thereby further demonstrating that they published those implications with actual malice.

251. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory implications after they were informed that they were false and defamatory and specifically asked to retract or correct them, thereby further demonstrating that they published those implications with actual malice.

252. Defendants CNN, Cohen, and Bonifield's publication of these false and defamatory implications was negligent at a minimum.

253. Defendants CNN, Cohen, and Bonifield made these defamatory implications intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

254. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish these false and defamatory implications or, if they did, they abused that privilege.

255. These defamatory implications have been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the June 1 Article, they knew that these defamatory implications would be republished and disseminated to new, larger audiences.

256. In addition to injuries presumed by law, these defamatory implications have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

257. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

258. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT THREE – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE JUNE 1 VIDEO REPORT
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)**

259. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

260. Defendants CNN, Cohen, and Bonifield published false and defamatory statements about Dr. Black in their June 1, 2015 video report titled "The Hospital with a Serious Heart Problem" (the "June 1 Video Report"), which they published to a worldwide audience on the website CNN.com and, upon information and belief, on CNN's television station.

261. The June 1, 2015 Video Report contains the following false and defamatory statements of fact:

- (a) “But CNN has calculated a death rate based on these internal hospital reports, which include surgical caseloads. We calculate that from 2011 to 2013, the death rate for open-heart surgery on children at St. Mary’s Medical Center was more than three times higher than the national average.”
- (b) A graphic titled “Death Rate 2011-2013 Pediatric Open Heart Surgery” claiming that “St. Mary’s” had a “death rate” of “12.5%” compared to a “National Average” “death rate” of “3.3%.”
- (c) “These parents want to know why St. Mary’s is still doing heart surgeries on babies. And the answer may come down to one thing: money.”

262. These statements of fact are of and concerning Dr. Black. The June 1 Video Report makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

263. These statements are reasonably understood to be statements of and concerning Dr. Black and were in fact understood by persons reading them to be statements of and concerning Dr. Black.

264. These statements are reasonably understood to be statements of fact regarding Dr. Black and were reasonably understood by persons reading them to be statements of fact regarding Dr. Black.

265. These statements are false. Dr. Black and St. Mary’s pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality (“death”) rate and the national average mortality

rate as calculated by the Society of Thoracic Surgeons. Moreover, Dr. Black and St. Mary's did not perform surgeries that they were not competent to perform in order to profit financially.

266. These statements are defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from these statements is readily apparent. These statements would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

267. By publication of these statements, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

268. These statements are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

269. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they had knowledge that these statements were false or they published the statements with reckless disregard for their truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

270. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they published them even though they were specifically informed of their falsity numerous times, including in February 2015, over three months before they published the June 1 Video Report, when they were expressly told, among other things, that the data on which they were basing these statements "does not represent all cases and/or procedures performed as part of

the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

271. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they published them even though they were specifically informed in February 2015, over three months before they published the June 1 Article, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States) meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

272. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

273. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary’s to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

274. Defendants CNN, Cohen, and Bonifield continue to make the June 1 Video Report available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions following their publication of the video that their statements were false and defamatory, thereby further demonstrating that they published those statements with actual malice.

275. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory statements after they were specifically informed that these statements are false and defamatory and specifically asked to retract or correct them, thereby further demonstrating that they published those statements with actual malice.

276. Defendants CNN, Cohen, and Bonifield's publication of these false and defamatory statements was negligent at a minimum.

277. Defendants CNN, Cohen, and Bonifield made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

278. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish these false and defamatory statements or, if they did, they abused that privilege.

279. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the June 1 Video Report, they knew that these statements would be republished and disseminated to new, larger audiences.

280. In addition to injuries presumed by law, these defamatory falsehoods have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black’s professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

281. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

282. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT FOUR – DEFAMATION BY IMPLICATION
FOR THE JUNE 1 VIDEO REPORT
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)**

283. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

284. Defendants CNN, Cohen, and Bonifield published false and defamatory implications about Dr. Black in their June 1, 2015 video report titled “The Hospital with a Serious Heart Problem” (the “June 1 Video Report”), which they published to a worldwide audience on the website CNN.com and, upon information and belief, on CNN’s television station.

285. Through the June 1 Video, Defendants CNN, Cohen, and Bonifield created and published a false narrative about Dr. Black and falsely implied and suggested to readers of the article that Dr. Black is an incompetent, dishonest, and inexperienced doctor leading a surgical program in crisis and recklessly operating on young children to profit at the expense of children's lives. Defendants CNN, Cohen, and Bonifield did this by intentionally choosing to publish statements by persons they knew would be strongly biased against Dr. Black and by deliberately phrasing statements so as to convey an image of Dr. Black as a lying, incompetent, unqualified surgeon. The Video did this by, among other things:

- (a) Suggesting that Dr. Black did not know what he was doing as a surgeon by intentionally quoting a person Defendants CNN, Cohen, and Bonifield knew to be biased against Dr. Black as saying that "He [Dr. Black] really sounded like he knew what he was doing."
- (b) Suggesting that Dr. Black falsely instilled trust in families of his patients by intentionally quoting a person Defendants CNN, Cohen, and Bonifield knew to be biased against Dr. Black as saying that "He [Dr. Black] just made it seem like he was the best person to do this [surgery]," another saying that "[i]t's horrible that [you] go into a program like that and they can be dishonest with you," and another saying that "[a]ll I could do was believe in his words, and it was the opposite of what he said."
- (c) Posing the rhetorical question "Why did so many babies die at St. Mary's?"
- (d) Stating that Dr. Black and the Program "had a disturbing backstory."
- (e) Publishing indictments of Dr. Black and the Program by quoting people Defendants CNN, Cohen, and Bonifield knew to be biased against

Dr. Black as saying that “I don’t think they should do any more surgery on kids at St. Mary’s. St. Mary’s not qualified for surgery. That’s that.” and “Every day somebody’s making a decision to allow some parent to bring their child and to turn them over into the care of a group of people that aren’t fit to do what they’re doing.”

286. These defamatory implications are of and concerning Dr. Black. Indeed, the video prominently features Dr. Black—including a photograph of Dr. Black captioned “Dr. Michael Black, pediatric heart surgeon, St. Mary’s Medical Center.”

287. These defamatory implications are reasonably understood to be implications of and concerning Dr. Black and were in fact understood by persons reading them to be implications of and concerning Dr. Black.

288. These defamatory implications are reasonably understood to be an implications of fact regarding Dr. Black and were reasonably understood by persons seeing them to be implications of fact regarding Dr. Black.

289. These implications are false. Dr. Black is a highly-trained surgeon, who did not lie about his qualifications or surgical results, and did not perform surgery recklessly, wantonly, and/or with anything less than the appropriate standard of care.

290. These implications are defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from these implications are readily apparent. These implications would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

291. By publication of these implications, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black’s reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or

obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

292. These defamatory implications are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

293. Defendants CNN, Cohen, and Bonifield published these defamatory implications with actual malice in that they had knowledge that they were false or they published them with reckless disregard for their truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

294. Defendants CNN, Cohen, and Bonifield published these defamatory implications with actual malice in that they published them even though they were specifically informed that Dr. Black is an exemplary surgeon and the performance and results of St. Mary's pediatric cardiac surgery program, led by Dr. Black, the head of that Program, were highly satisfactory, earning a two-star rating along with every other such program in the State of Florida and 78 of the other 95 programs receiving STS star ratings nationwide.

295. Defendants CNN, Cohen, and Bonifield published these defamatory implications with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating their falsity.

296. Defendants CNN, Cohen, and Bonifield continue to make the June 1 Video Report containing these defamatory implications available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions following their publication of the video that their implications

were false and defamatory, thereby further demonstrating that they published those implications with actual malice.

297. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory implications after they were informed that they were false and defamatory and asked to retract or correct them, thereby further demonstrating that they published those implications with actual malice.

298. Defendants CNN, Cohen, and Bonifield's publication of these false and defamatory implications was negligent at a minimum.

299. Defendants CNN, Cohen, and Bonifield made these defamatory implications intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

300. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish these false and defamatory implications or, if they did, they abused that privilege.

301. These defamatory implications have been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the June 1 Video Report, they knew that these defamatory implications would be republished and disseminated to new, larger audiences.

302. In addition to injuries presumed by law, these defamatory implications have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;

- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

303. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

304. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT FIVE – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE JUNE 3 ARTICLE
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)**

305. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

306. Defendants CNN, Cohen, and Bonifield published false and defamatory statements about Dr. Black in their June 3, 2015 article titled “9th Baby Dies After Heart Surgery at Florida Hospital” (the “June 3 Article”), which they published to a worldwide audience on the website CNN.com.

307. The June 3, 2015 Article contains the following false and defamatory statement of fact: “A CNN investigation calculates that from 2011 to 2013, the program had a 12.5% mortality rate for open heart surgeries, which is more than three times the national average.”

308. This statement of fact is of and concerning Dr. Black. The June 3 Article, which also links to the June 1 Article, makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary's for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

309. This statement is reasonably understood to be a statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

310. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

311. This statement is false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

312. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

313. By publication of this statement, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

314. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

315. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for its truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

316. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they published it even though they were specifically informed of its falsity numerous times, including in February 2015, over three months before they published the June 3 Article, when they were expressly told, among other things, that the data on which they were basing this statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

317. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they published it even though they were specifically informed in February 2015, over three months before they published the June 3 Article, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States) meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery

as is expected; in other words, the 95% confidence interval for the St. Mary's Program's risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black's and the Program's mortality rate and the national average mortality rate.

318. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of this statement.

319. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

320. Defendants CNN, Cohen, and Bonifield continue to make the June 3 Article available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions following their publication of the article that this statement was false and defamatory, thereby further demonstrating that they published that statement with actual malice.

321. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory statement after they were specifically informed that that statement was false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published that statement with actual malice.

322. Defendants CNN, Cohen, and Bonifield's publication of this false and defamatory statement was negligent at a minimum.

323. Defendants CNN, Cohen, and Bonifield made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

324. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

325. This defamatory statement has been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the June 3 Article, they knew that this statement would be republished and disseminated to new, larger audiences.

326. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) Impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

327. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

328. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT SIX – DEFAMATION
FOR PUBLICATION OF THE JUNE 3 VIDEO REPORT
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)**

329. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

330. Defendants CNN, Cohen, and Bonifield published false and defamatory statements about Dr. Black in their June 3, 2015 video report titled “9th Baby Dies After Heart Surgery at Florida Hospital” (the “June 3 Video Report”), which they published to a worldwide audience on the website CNN.com and, upon information and belief, on CNN’s television station.

331. The June 3, 2015 Video Report contains the following false and defamatory statements of fact:

- (a) “Using data St. Mary’s submitted to the State of Florida, CNN calculates that from 2011 through 2013, the program’s mortality rate for pediatric open heart surgeries was 12.5%. That’s more than three times higher than the national average.”
- (b) A graphic titled “Death Rate 2011-2013 Pediatric Open Heart Surgery” claiming that “St. Mary’s” had a “death rate” of “12.5%” compared to a “National Average” “death rate” of “3.3%.”

332. These statements of fact are of and concerning Dr. Black. The June 3 Video Report makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries

at St. Mary's for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

333. These statements are reasonably understood to be statements of and concerning Dr. Black and were in fact understood by persons reading them to be statements of and concerning Dr. Black.

334. These statements are reasonably understood to be statements of fact regarding Dr. Black and were reasonably understood by persons reading them to be statements of fact regarding Dr. Black.

335. These statements are false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

336. These statements are defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from these statements is readily apparent. These statements would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

337. By publication of these statements, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

338. These statements are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace and because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

339. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they had knowledge that these statements were false or they published them with reckless disregard for their truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

340. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they published them even though they were specifically informed of their falsity numerous times, including in February 2015, over three months before they published the June 3 Video Report, when they were expressly told, among other things, that the data on which they were basing these statements “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

341. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they published them even though they were specifically informed in February 2015, over three months before they published the June 3 Video Report, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States) meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no

statistically significant difference between Dr. Black's and the Program's mortality rate and the national average mortality rate.

342. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

343. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

344. Defendants CNN, Cohen, and Bonifield continue to make the June 3 Video Report available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions following their publication of the video that their statements were false and defamatory, thereby further demonstrating that they published those statements with actual malice.

345. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory statements after they were specifically informed that these statements are false and defamatory and specifically asked to retract or correct them, thereby further demonstrating that they published those statements with actual malice.

346. Defendants CNN, Cohen, and Bonifield's publication of these false and defamatory statements was negligent at a minimum.

347. Defendants CNN, Cohen, and Bonifield made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

348. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish these false and defamatory statements or, if they did, they abused that privilege.

349. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the June 3 Video Report, they knew that these statements would be republished and disseminated to new, larger audiences.

350. In addition to injuries presumed by law, these defamatory falsehoods have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

351. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

352. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT SEVEN – DEFAMATION
FOR STATEMENTS IN THE JUNE 5 ARTICLE
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)**

353. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

354. Defendants CNN, Cohen, and Bonifield published false and defamatory statements about Dr. Black in their June 5, 2015 article titled “CNN report on high mortality rate for babies at Florida hospital leads to inquiry” (the “June 5 Article”), which they published to a worldwide audience on the website CNN.com.

355. The June 5, 2015 Article contains the following false and defamatory statement of fact: “The investigation came in response to a CNN story this week that showed between 2011 to 2013, the West Palm Beach hospital had a 12.5% mortality rate for open heart surgery, three times the national average.”

356. This statement of fact is of and concerning Dr. Black. The June 5 Article expressly references the CNN Defendants’ “investigation” of Dr. Black and St. Mary’s and links to the June 1 Article that further makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

357. This statement is reasonably understood to be statements of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

358. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

359. This statement is false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

360. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or has a tendency to injure Dr. Black in his office, occupation, business, or employment.

361. By publication of this statement, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

362. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

363. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for their truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and

to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

364. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they published them even though they were specifically informed in February 2015, over three months before they published the June 5 Article, that, among other things, the data on which they were basing this statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

365. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they published it even though they were specifically informed of its falsity numerous times, including in February 2015, over three months before they published the June 5 Article, when they were expressly told that, among other things, the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

366. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

367. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

368. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

369. Defendants CNN, Cohen, and Bonifield continue to make the June 5 Article available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions following their publication of the article that their statement was false and defamatory, thereby further demonstrating that they published the statement with actual malice.

370. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory statement after they were specifically informed that the statement is false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published the statement with actual malice.

371. Defendants CNN, Cohen, and Bonifield's publication of the false and defamatory statement was negligent at a minimum.

372. Defendants CNN, Cohen, and Bonifield made the defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

373. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

374. The defamatory statement has been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the June 5 Article, they knew that these statements would be republished and disseminated to new, larger audiences.

375. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

376. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

377. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT EIGHT – DEFAMATION
FOR STATEMENTS IN THE JUNE 8 ARTICLE
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)**

378. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

379. Defendants CNN, Cohen, and Bonifield published false and defamatory statements about Dr. Black in their June 8, 2015 article titled “Hospital Suspends Elective Heart Surgeries on Children After CNN Investigation” (the “June 8 Article”), which they published to a worldwide audience on the website CNN.com.

380. The June 8, 2015 Article contains the following false and defamatory statements of fact:

- (a) “St. Mary’s Medical Center in West Palm Beach, Florida, has suspended elective pediatric heart surgeries after a CNN investigation calculated that the program had a mortality rate for open heart surgeries three times higher than the national average.”
- (b) “CNN’s calculation was based on all open-heart surgeries reported to the state of Florida by the hospital since the inception of the program in 2011 through 2013. CNN found from looking at state records submitted by St. Mary’s that from 2011 to 2013, the hospital performed 48 open heart surgeries. CNN spoke to six families whose babies died during that time period after having open heart surgery at St. Mary’s. That gives an open

heart surgery death rate of 12.5% from 2011 to 2013. Nationally, the average mortality rate for babies having open heart surgery from 2010 to 2013 was 3.3%, according to Dr. Jeffrey Jacobs, the chair of the Society of Thoracic Surgeons National Database Work Force.”

381. This statement of fact is of and concerning Dr. Black. The June 8 Article expressly references the CNN Defendants’ “investigation” of Dr. Black and St. Mary’s and links to the June 5 Article and June 1 Article that further makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

382. These statements are reasonably understood to be statements of and concerning Dr. Black and were in fact understood by persons reading them to be statements of and concerning Dr. Black.

383. These statements are reasonably understood to be statements of fact regarding Dr. Black and were reasonably understood by persons reading them to be statements of fact regarding Dr. Black.

384. These statements are false. Dr. Black and St. Mary’s pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality (“death”) rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

385. These statements are defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from these statements is readily apparent. These statements would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

386. By publication of these statements, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

387. These statements are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

388. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they had knowledge that these statements were false or they published the statements with reckless disregard for their truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

389. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they published them even though they were specifically informed of their falsity numerous times, including in February 2015, over three months before they published the June 8 Article, when they were expressly told, among other things, that the data on which they were basing these statements "does not represent all cases and/or procedures performed as part of the program" and that "the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program."

390. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they published them even though they were specifically informed in February 2015, over three months before they published the June 8 Article, that the Society of Thoracic Surgeons—which they admit is the "gold standard" for benchmarking pediatric cardiac surgical

programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

391. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

392. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they published them even though they were specifically informed yet again on June 7, 2015 that those statements were false and defamatory.

393. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary’s to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

394. Defendants CNN, Cohen, and Bonifield published these statements with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

395. Defendants CNN, Cohen, and Bonifield continue to make the June 8 Article available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions following their publication of the article that their statements were false and defamatory, thereby further demonstrating that they published those statements with actual malice.

396. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory statements after they were specifically informed that these statements are false and defamatory and specifically asked to retract or correct them, thereby further demonstrating that they published those statements with actual malice.

397. Defendants CNN, Cohen, and Bonifield's publication of these false and defamatory statements was negligent at a minimum.

398. Defendants CNN, Cohen, and Bonifield made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

399. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish these false and defamatory statements or, if they did, they abused that privilege.

400. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the June 8 Article, they knew that these statements would be republished and disseminated to new, larger audiences.

401. In addition to injuries presumed by law, these defamatory falsehoods have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black’s professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

402. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

403. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT NINE – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE JUNE 8 VIDEO REPORT
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)**

404. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

405. Defendants CNN, Cohen, and Bonifield published false and defamatory statements about Dr. Black in their June 8, 2015 video news report titled “St. Mary’s Hospital Suspends Pediatric Heart Surgeries” (the “June 8 Video Report”), which they published to a worldwide audience on the website CNN.com and on the television show “Newsroom” on CNN’s television station.

406. The June 8 Video Report contains the following false and defamatory statement of fact: A banner at the bottom of the screen throughout the video states “CNN investigation found mortality rate 3x higher than natl. average.”

407. This statement of fact is of and concerning Dr. Black. The June 8 Video Report, which expressly references the CNN Defendants’ “investigation” of Dr. Black and St. Mary’s, was published alongside the June 8 Article on CNN.com, which itself links to the June 1 Article and further makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

408. This statement is reasonably understood to be a statement of and concerning Dr. Black and was in fact understood by persons seeing it to be a statement of and concerning Dr. Black.

409. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons seeing it to be a statement of fact regarding Dr. Black.

410. This statement is false. Dr. Black and St. Mary’s pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality (“death”) rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

411. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

412. By publication of this statement, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

413. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

414. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for their truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

415. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they published it even though they were specifically informed of their falsity numerous times, including in February 2015, over three months before they published the June 8 Video Report, when they were expressly told, among other things, that the data on which they were basing this statement "does not represent all cases and/or procedures performed as part of the program" and that "the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program."

416. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they published it even though they were specifically informed in February 2015, over three months before they published the June 8 Video Report, that the Society of Thoracic Surgeons—which they admit is the "gold standard" for benchmarking pediatric cardiac surgical

programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States) meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

417. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of that statement.

418. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they published it even though they were specifically informed yet again on June 7, 2015 that that statement was false and defamatory.

419. Defendants CNN, Cohen, and Bonifield published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary’s to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

420. Defendants CNN, Cohen, and Bonifield continued to make the June 8 Video Report available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions following their

publication of the article that this statement was false and defamatory, thereby further demonstrating that they published that statement with actual malice.

421. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory statement after they were specifically informed that that statement was false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published that statement with actual malice.

422. Defendants CNN, Cohen, and Bonifield's publication of this false and defamatory statement was negligent at a minimum.

423. Defendants CNN, Cohen, and Bonifield made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

424. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

425. This defamatory statement has been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the June 8 Video Report, they knew that this statement would be republished and disseminated to new, larger audiences.

426. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) Impugning Dr. Black's professional and personal reputations;

- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

427. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

428. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT TEN – DEFAMATION
FOR STATEMENTS IN THE JUNE 26 ARTICLE
(AGAINST DEFENDANTS CNN AND COHEN)**

429. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

430. Defendants CNN and Cohen published false and defamatory statements about Dr. Black in their June 26, 2015 article titled “Patient Safety Evaluated at St. Mary’s Hospital” (the “June 26 Article”), which they published to a worldwide audience on the website CNN.com.

431. The June 26 Article contains the following false and defamatory statements of fact:

- (a) “The nation’s largest accrediting agency for hospitals is evaluating ‘patient safety-related events at St. Mary’s Medical Center’ in Florida,

which CNN found had a high mortality rate for pediatric open heart surgeries from 2011-2013.”

- (b) “In its investigation, CNN calculated that from 2011-2013, the raw mortality rate at St. Mary’s for pediatric open heart surgeries was 12.5%, which is more than three times higher than the national average for such surgeries during that time.”

432. These statements of fact are of and concerning Dr. Black. The June 26 Article, which expressly references the CNN Defendants’ “investigation” of Dr. Black and St. Mary’s and links to the June 1 Article that further makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

433. These statements are reasonably understood to be statements of and concerning Dr. Black and were in fact understood by persons reading them to be statements of and concerning Dr. Black.

434. These statements are reasonably understood to be statements of fact regarding Dr. Black and were reasonably understood by persons reading them to be statements of fact regarding Dr. Black.

435. These statements are false. Dr. Black and St. Mary’s pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality (“death”) rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

436. These statements are defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from these statements is readily apparent. These statements would expose

Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

437. By publication of these statements, Defendants CNN and Cohen did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

438. These statements are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

439. Defendants CNN and Cohen published these statements with actual malice in that they had knowledge that these statements were false or they published the statements with reckless disregard for their truth or falsity. Defendants CNN and Cohen did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

440. Defendants CNN and Cohen published these statements with actual malice in that they published them even though they were specifically informed of their falsity numerous times, including in February 2015, over three months before they published the June 26 Article, when they were expressly told, among other things, that the data on which they were basing these statements "does not represent all cases and/or procedures performed as part of the program" and that "the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program."

441. Defendants CNN and Cohen published these statements with actual malice in that they published them even though they were specifically informed in February 2015, over three months before they published the June 26 Article, that the Society of Thoracic Surgeons—which

they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States) meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

442. Defendants CNN and Cohen published these statements with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

443. Defendants CNN and Cohen published these statements with actual malice in that they published them even though they were specifically informed yet again on June 7, 2015 that those statements were false and defamatory.

444. Defendants CNN and Cohen published these statements with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary’s to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

445. Defendants CNN and Cohen published these statements with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

446. Defendants CNN and Cohen continue to make the June 26 Article available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions that their statements were false and defamatory, thereby further demonstrating that they published those statements with actual malice.

447. Defendants CNN and Cohen failed and refused to retract or correct their false and defamatory statements after they were specifically informed that these statements are false and defamatory and specifically asked to retract or correct them, thereby further demonstrating that they published those statements with actual malice.

448. Defendants CNN's and Cohen's publication of these false and defamatory statements was negligent at a minimum.

449. Defendants CNN and Cohen made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

450. Defendants CNN and Cohen had no applicable privilege or legal authorization to publish these false and defamatory statements or, if they did, they abused that privilege.

451. These defamatory statements have been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN and Cohen, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN and Cohen published the June 26 Article, they knew that these statements would be republished and disseminated to new, larger audiences.

452. In addition to injuries presumed by law, these defamatory falsehoods have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;

- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

453. Defendants CNN and Cohen are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

454. Defendants CNN and Cohen may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT ELEVEN – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE JUNE 26 VIDEO REPORT
(AGAINST DEFENDANT CNN)**

455. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

456. Defendant CNN published false and defamatory statements about Dr. Black in their June 26, 2015 televised report titled “Patient Safety Evaluated at St. Mary’s Hospital” (the “June 26 Video Report”), which CNN published to a worldwide audience on the television program “New Day” on its television station and the website CNN.com.

457. The June 26 Video Report contains the following false and defamatory statement of fact: “This announcement follows our own CNN investigation, and our findings showed a mortality rate for pediatric open-heart surgeries from 2011 to 2013 was three times the national average.”

458. This statement of fact is of and concerning Dr. Black. The June 26 Video Report expressly references the CNN Defendants' "investigation" of Dr. Black and St. Mary's and was published alongside the June 26 Article that links to the June 1 Article that further makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary's for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

459. This statement is reasonably understood to be a statement of and concerning Dr. Black and was in fact understood by persons hearing it to be a statement of and concerning Dr. Black.

460. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons hearing it to be a statement of fact regarding Dr. Black.

461. This statement is false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

462. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

463. By publication of this statement, Defendant CNN did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

464. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

465. Defendant CNN published this statement with actual malice in that it had knowledge that this statement was false or they published the statement with reckless disregard for its truth or falsity. Defendant CNN did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

466. Defendant CNN published this statement with actual malice in that it published it even though they were specifically informed in February 2015, nearly four months before they published the June 26 Video Report Article, that the data on which they were basing this statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

467. Defendant CNN published this statement with actual malice in that it published it even though it was specifically informed of its falsity numerous times, including in February 2015, over three months before it published the June 26 Video Report, when it was expressly told, among other things, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio

overlapped with the number 1 and there is no statistically significant difference between Dr. Black's and the Program's mortality rate and the national average mortality rate.

468. Defendant CNN published this statement with actual malice in that it purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

469. Defendant CNN published this statement with actual malice in that it published it even though it was specifically informed yet again on June 7, 2015 that that statement was false and defamatory.

470. Defendant CNN published this statement with actual malice in that it knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

471. Defendant CNN continues to make the June 26 Video Report Article available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions that this statement was false and defamatory, thereby further demonstrating that it published that statement with actual malice.

472. Defendant CNN refused to retract or correct its false and defamatory statement after they were specifically informed that that statement was false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published that statement with actual malice.

473. Defendant CNN's publication of this false and defamatory statement was negligent at a minimum.

474. Defendant CNN made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

475. Defendant CNN had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

476. This defamatory statement has been repeated and republished in other media outlets, which was reasonably foreseeable to Defendant CNN, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendant CNN published the June 26 Video Report, it knew that this statement would be republished and disseminated to new, larger audiences.

477. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) Impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

478. Defendant CNN is liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

479. Defendants CNN may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of its defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT TWELVE – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE AUGUST 17 ARTICLE
(AGAINST DEFENDANTS CNN, COHEN, BONIFIELD, AND FORD)**

480. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

481. Defendants CNN, Cohen, Bonifield, and Ford published false and defamatory statements about Dr. Black in their August 17, 2015 article titled “CNN report on Florida hospital leads to heart surgery program closure” (the “August 17 Article”), which they published to a worldwide audience on the website CNN.com.

482. The August 17 Article contains the following false and defamatory statement of fact: “The moves comes in the wake of a yearlong CNN investigation, which found that from 2011 to 2013, the program had a 12.5% mortality rate for open heart surgeries, which is more than three times the national average.”

483. This statement of fact is of and concerning Dr. Black. The August 17 Article expressly references the CNN Defendants’ “investigation” of Dr. Black and St. Mary’s and links to the June 3 Article that further makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, Bonifield, and Ford claimed a mortality rate of more than three times the national average.

484. This statement is reasonably understood to be a statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

485. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

486. This statement is false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

487. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

488. By publication of this statement, Defendants CNN, Cohen, Bonifield, and Ford did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

489. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

490. Defendants CNN, Cohen, Bonifield, and Ford published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for their truth or falsity. Defendants CNN, Cohen, Bonifield, and Ford did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

491. Defendants CNN, Cohen, Bonifield, and Ford published this statement with actual malice in that they published it even though they were specifically informed of their falsity

numerous times, including in February 2015, nearly five months before they published the August 17 Article, when they were expressly told, among other things, that the data on which they were basing this statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

492. Defendants CNN, Cohen, Bonifield, and Ford published this statement with actual malice in that they published it even though they were specifically informed in February 2015, over three months before they published the August 17 Article, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States) meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

493. Defendants CNN, Cohen, Bonifield, and Ford published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of this statement.

494. Defendants CNN, Cohen, Bonifield, and Ford published this statement with actual malice in that they published it even though they were specifically informed yet again on June 7, 2015 that this statement was false and defamatory.

495. Defendants CNN, Cohen, Bonifield, and Ford published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

496. Defendants CNN, Cohen, Bonifield, and Ford continue to make the August 17 Article available to a nationwide and global audience on CNN.com—where it remains available to this day—even after again being specifically informed on multiple occasions that this statement was false and defamatory, thereby further demonstrating that they published that statement with actual malice.

497. Defendants CNN, Cohen, Bonifield, and Ford failed and refused to retract or correct their false and defamatory statement after they were specifically informed that that statement was false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published that statement with actual malice.

498. Defendants CNN, Cohen, Bonifield, and Ford's publication of this false and defamatory statement was negligent at a minimum.

499. Defendants CNN, Cohen, Bonifield, and Ford made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

500. Defendants CNN, Cohen, Bonifield, and Ford had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

501. This defamatory statement has been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, Bonifield, and Ford, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time the Defendants CNN, Cohen, Bonifield, and Ford published the August 17 Article, they knew that this statement would be republished and disseminated to new, larger audiences.

502. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) Impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

503. Defendants CNN, Cohen, Bonifield, and Ford are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

504. Defendants CNN, Cohen, Bonifield, and Ford may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT THIRTEEN – DEFAMATION BY IMPLICATION
FOR THE JANUARY 13, 2016 ARTICLE
(AGAINST DEFENDANTS CNN, COHEN, AND BONIFIELD)**

505. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

506. Defendants CNN, Cohen, and Bonifield published false and defamatory implications about Dr. Black in their January 13, 2016 article titled “After CNN Investigation, A Push Halt Child Heart Surgery At Some Hospitals” (the “January 13 Article”), which they published to a worldwide audience on the website CNN.com.

507. Through the January 13 Article, Defendants CNN, Cohen, and Bonifield published a false narrative about Dr. Black and falsely implied and suggested to readers of the article that Dr. Black is an incompetent, dishonest, and inexperienced doctor who caused the death of at least one baby by ineptly performing surgery on her and providing a level of care to that patient below the appropriate standard of care. Defendants CNN, Cohen, and Bonifield did this by stating that a baby on whom Dr. Black operated “didn’t have to die,” and by publishing statements accusing Dr. Black of making “lethal mistakes” and “caus[ing]” “a problem” with that baby.

508. These defamatory implications are of and concerning Dr. Black. The Article specifically discusses the pediatric cardiac surgery program at St. Mary’s, expressly states that the patient who the article claims “didn’t have to die,” and on whom “lethal mistakes” were made underwent pediatric cardiac surgery at St. Mary’s, and, as is well-known, Dr. Black was the only surgeon who performed pediatric cardiac surgeries at St. Mary’s when St. Mary’s pediatric cardiac surgery program was operational. The Article also contains a hyperlink directing readers to the June 1 Article, which identifies Dr. Black by name as the surgeon who performed pediatric cardiac surgeries at St. Mary’s.

509. These defamatory implications are reasonably understood to be implications of and concerning Dr. Black and were in fact understood by persons reading the Article to be implications of and concerning Dr. Black.

510. These defamatory implications are reasonably understood to be implications of fact regarding Dr. Black and were reasonably understood by persons seeing them to be implications of fact regarding Dr. Black.

511. These implications are false. Dr. Black has never performed surgery recklessly, wantonly, and/or with anything less than with care that meets or exceeds the standard of care. Dr. Black is a highly-trained surgeon and has never performed surgery on any of his patients, including Jashnide Desamours and the unnamed baby in the January 13 Article, recklessly and/or wantonly.

512. These implications are defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from these implications are readily apparent. These implications would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

513. By publication of these implications, Defendants CNN, Cohen, and Bonifield did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

514. These defamatory implications are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

515. Defendants CNN, Cohen, and Bonifield published these defamatory implications with actual malice in that they had knowledge that they were false or they published them with reckless disregard for their truth or falsity. Defendants CNN, Cohen, and Bonifield did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

516. Defendants CNN, Cohen, and Bonifield published these defamatory implications with actual malice in that they published them even though they were specifically informed that Dr. Black is an exemplary surgeon and the performance and results of St. Mary's pediatric cardiac surgery program, led by Dr. Black, the head of that Program, were highly satisfactory, earning a two-star rating along with every other such program in the State of Florida and 78 of the other 95 programs receiving STS star ratings.

517. Defendants CNN, Cohen, and Bonifield published these defamatory implications with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of these defamatory implications.

518. Defendants CNN, Cohen, and Bonifield continue to make the January 13 Article containing these defamatory implications available to a nationwide and global audience on CNN.com—where it remains available to this day—even after being specifically informed on multiple occasions that the implications in the article about Dr. Black are false and defamatory, thereby further demonstrating that they published those implications with actual malice.

519. Defendants CNN, Cohen, and Bonifield failed and refused to retract or correct their false and defamatory implications after they were informed that they were false and defamatory, thereby further demonstrating that they published those implications with actual malice.

520. Defendants CNN, Cohen, and Bonifield's publication of these false and defamatory implications was negligent at a minimum.

521. Defendants CNN, Cohen, and Bonifield made these defamatory implications intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

522. Defendants CNN, Cohen, and Bonifield had no applicable privilege or legal authorization to publish these false and defamatory implications or, if they did, they abused that privilege.

523. These defamatory implications have been repeated and republished in other media outlets, which was reasonably foreseeable to Defendants CNN, Cohen, and Bonifield, particularly because CNN is a national news organization with a broad audience across the United States and across the world. At the time Defendants CNN, Cohen, and Bonifield published the January 13 Article, they knew that these defamatory implications would be republished and disseminated to new, larger audiences.

524. In addition to injuries presumed by law, these defamatory implications have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

525. Defendants CNN, Cohen, and Bonifield are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

526. Defendants CNN, Cohen, and Bonifield may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT FOURTEEN – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE JUNE 1 CNN HEALTH TWEET
(AGAINST DEFENDANTS CNN AND COHEN)**

527. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

528. Defendants CNN and Cohen published false and defamatory statements about Dr. Black in their June 1, 2015 post on Twitter (the “June 1 CNN Health Tweet”) through CNN Health’s Twitter account, @cnnhealth.

529. The June 1 CNN Health Tweet links to the June 1, 2015 article “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital” (the “June 1 Article”), and expressly repeats the following false and defamatory statement of fact: “At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average.” (emphasis in original).

530. This statement of fact is of and concerning Dr. Black. The June 1 CNN Health Tweet links to—and thereby incorporates—and is intended to publicize the June 1 Article, which makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN and Cohen claimed a mortality rate of more than three times the national average.

531. This statement is reasonably understood to be statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

532. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

533. These statements are false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

534. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

535. By publication of this statement, Defendants CNN and Cohen did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

536. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

537. Defendants CNN and Cohen published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for their truth or falsity. Defendants CNN and Cohen did so in order to further a

preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

538. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed of their falsity numerous times, including in February 2015, over three months before they published the June 1 CNN Health Tweet, when they were expressly told, among other things, that the data on which they were basing the statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

539. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed in February 2015, over three months before they published the June 1 CNN Health Tweet, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

540. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of that statement.

541. Defendants CNN and Cohen published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

542. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

543. Defendants CNN and Cohen continue to make the June 1 CNN Health Tweet available to a nationwide and global audience on Twitter—where it remains available to this day—even after again being specifically informed multiple times that their statement was false and defamatory, thereby further demonstrating that they published the statement with actual malice.

544. Defendants CNN and Cohen failed and refused to retract or correct their false and defamatory statement after they were specifically informed that the statement is false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published the statement with actual malice.

545. Defendants CNN's and Cohen's publication of this false and defamatory statement was negligent at a minimum.

546. Defendants CNN and Cohen made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

547. Defendants CNN and Cohen had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

548. This defamatory statement has been repeated numerous times, which was reasonably foreseeable to Defendants CNN and Cohen, particularly because CNN is a national news organization with a broad audience across the United States and across the world and because the CNN Health Twitter account has and over 387,000 Twitter followers and the CNN Twitter account has over 23.1 million Twitter followers. Specifically, the June 1 CNN Health Tweet has been retweeted 23 times to date and linked as a favorite tweet by 10 Twitter members. At the time Defendants CNN and Cohen posted the June 1 CNN Health Tweet, they knew that this statement would be republished and disseminated to new, larger audiences.

549. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

550. Defendants CNN and Cohen are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

551. Defendants CNN and Cohen may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT FIFTEEN – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE JUNE 1 COHEN TWEET
(AGAINST DEFENDANTS CNN AND COHEN)**

552. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

553. Defendant Cohen, with the encouragement and approval of Defendant CNN and Cohen published a false and defamatory statement about Dr. Black in a June 1, 2015 post on Twitter (the “June 1 Cohen Tweet”) through Defendant Cohen’s Twitter account, @elizcohencnn.

554. The June 1 Cohen Tweet links to the June 1, 2015 article “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital” (the “June 1 Article”) and expressly repeats the following false and defamatory statement of fact: “At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average.” (emphasis in original).

555. This statement of fact is of and concerning Dr. Black. The June 1 Cohen Tweet links to—and thereby incorporates—and is intended to publicize the CNN Defendants’ June 1 Article on pediatric cardiac surgeries at St. Mary’s, which makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN and Cohen claimed a mortality rate of more than three times the national average.

556. This statement is reasonably understood to be a statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

557. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

558. This statement is false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

559. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from the statement is readily apparent. The statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or has a tendency to injure Dr. Black in his office, occupation, business, or employment.

560. By publication of this statement, Defendants CNN and Cohen did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

561. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

562. Defendants CNN and Cohen published this statement with actual malice in that they had knowledge that the statement was false or they published the statement with reckless disregard for its truth or falsity. Defendants CNN and Cohen did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

563. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed of its falsity numerous times, including in February 2015, over three months before they published the June 1 Cohen Tweet, when they were expressly told, among other things, that the data on which they were basing the

statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

564. Defendants CNN and Cohen published these statements with actual malice in that they published them even though they were specifically informed in February 2015, over three months before they published the June 1 Cohen Tweet, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

565. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of that statement.

566. Defendants CNN and Cohen published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary’s to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

567. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

568. Defendants CNN and Cohen continue to make the June 1 Cohen Tweet available to a nationwide and global audience on Twitter—where it remains available to this day—even after again being specifically informed multiple times that their statement was false and defamatory, thereby further demonstrating that they published the statement with actual malice.

569. Defendants CNN and Cohen failed and refused to retract or correct their false and defamatory statement after they were specifically informed that the statement is false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published the statement with actual malice.

570. Defendants CNN's and Cohen's publication of this false and defamatory statement was negligent at a minimum.

571. Defendants CNN and Cohen made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

572. Defendants CNN and Cohen had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

573. This defamatory statement has been repeated numerous times, which was reasonably foreseeable to Defendants CNN and Cohen, particularly because CNN is a national news organization with a broad audience across the United States and across the world and because the CNN Health Twitter account has and over 387,000 Twitter followers and the CNN Twitter account has over 23.1 million Twitter followers.. Specifically, the June 1 Cohen Tweet has been retweeted 42 times to date and linked as a favorite tweet by 24 Twitter members, which

was reasonably foreseeable to Defendants CNN and Cohen, particularly because CNN is a national news organization with a broad audience across the United States and across the world and Defendant Cohen has over 20,100 Twitter followers. At the time Defendant Cohen posted the June 1 Cohen Tweet, Defendants CNN and Cohen knew that this statement would be republished and disseminated to new, larger audiences.

574. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black’s professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

575. Defendants CNN and Cohen are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

576. Defendants CNN and Cohen may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT SIXTEEN – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE
JUNE 1 CNN HEALTH FACEBOOK POST
(AGAINST DEFENDANTS CNN AND COHEN)**

577. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

578. Defendants CNN and Cohen published false and defamatory statements about Dr. Black in their June 1, 2015 post on Facebook (the “June 1 CNN Health Facebook Post”) through CNN Health’s Facebook account. This June 1 CNN Health Facebook Post links to the June 1, 2015 article “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital” (the “June 1 Article”), and expressly repeats the following false and defamatory statements of fact:

- (a) “At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average.” (emphasis included)
- (b) “The mortality rate for babies having heart surgery at St. Mary’s Medical Center was three times the national average from 2011-2013.”

579. These statements of fact are of and concerning Dr. Black. The June 1 CNN Health Facebook Post links to—and thereby incorporates—and is intended to publicize the June 1 Article, which makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN and Cohen claimed a mortality rate of more than three times the national average.

580. These statements are reasonably understood to be statements of and concerning Dr. Black and were in fact understood by persons reading them to be statements of and concerning Dr. Black.

581. These statements are reasonably understood to be statements of fact regarding Dr. Black and were reasonably understood by persons reading them to be statements of fact regarding Dr. Black.

582. These statements are false. Dr. Black and St. Mary’s pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically

significant difference between their mortality (“death”) rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

583. These statements are defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from these statements is readily apparent. These statements would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

584. By publication of these statements, Defendants CNN and Cohen did cause harm to Dr. Black’s reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

585. These statements are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

586. Defendants CNN and Cohen published these statements with actual malice in that they had knowledge that these statements were false or they published these statements with reckless disregard for their truth or falsity. Defendants CNN and Cohen did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

587. Defendants CNN and Cohen published these statements with actual malice in that they published them even though they were specifically informed of their falsity numerous times, including in February 2015, over three months before they published the June 1 CNN Health Facebook Post, when they were expressly told, among other things, that the data on which they were basing these statements “does not represent all cases and/or procedures performed as part of

the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

588. Defendants CNN and Cohen published these statements with actual malice in that they published them even though they were specifically informed in February 2015, over three months before they published the June 1 CNN Health Facebook Post, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

589. Defendants CNN and Cohen published these statements with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

590. Defendants CNN and Cohen published these statements with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary’s to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

591. Defendants CNN and Cohen published these statements with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of these statements.

592. Defendants CNN and Cohen continue to make the June 1 CNN Health Facebook Post available to a nationwide and global audience on Facebook—where it remains available to this day—even after again being specifically informed multiple times that their statement was false and defamatory, thereby further demonstrating that they published the statement with actual malice.

593. Defendants CNN and Cohen failed and refused to retract or correct their false and defamatory statements after they were specifically informed that these statements are false and defamatory and specifically asked to retract or correct them, thereby further demonstrating that they published these statements with actual malice.

594. Defendants CNN's and Cohen's publication of these false and defamatory statements was negligent at a minimum.

595. Defendants CNN and Cohen made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

596. Defendants CNN and Cohen had no applicable privilege or legal authorization to publish these false and defamatory statements or, if they did, they abused that privilege.

597. This defamatory statement has been repeated numerous times, which was reasonably foreseeable to Defendants CNN and Cohen, particularly because CNN is a national news organization with a broad audience across the United States and across the world and over 252,325 "likes" for its CNN Health Facebook page. Specifically the June 1 CNN Health Facebook Post has been "liked" 47 times and "shared" 20 times, and has been commented on.

At the time Defendants CNN and Cohen posted the June 1 CNN Health Facebook Post, they knew that this statement would be republished and disseminated to new, larger audiences.

598. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black’s professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

599. Defendants CNN and Cohen are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

600. Defendants CNN and Cohen may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT SEVENTEEN – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE
JUNE 1 ANDERSON COOPER 360° FACEBOOK POST
(AGAINST DEFENDANTS CNN AND COOPER)**

601. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

602. Defendants CNN and Cooper published false and defamatory statements about Dr. Black in their June 1, 2015 post on Facebook (the “June 1 AC360 Facebook Post”) through the Anderson Cooper 360° Facebook account. This Facebook post links to the June 1, 2015 article “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital”

(the “June 1 Article”) and contains the following false and defamatory statement of fact: “The mortality rate for babies having heart surgery at St. Mary’s Medical Center was three times the national average from 2011-2013.”

603. This statement of fact is of and concerning Dr. Black. The June 1 AC360 Facebook Post links to—and thereby incorporates—and is intended to publicize the June 1 Article, which makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN and Cooper claimed a mortality rate of more than three times the national average.

604. This statement is reasonably understood to be statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

605. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

606. This statement is false. Dr. Black and St. Mary’s pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality (“death”) rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

607. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

608. By publication of this statement, Defendants CNN and Cooper did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

609. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

610. Defendants CNN and Cooper published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for its truth or falsity. Defendants CNN and Cooper did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

611. Defendants CNN and Cooper published this statement with actual malice in that they published it even though they were specifically informed in February 2015, over three months before they published the June 1 AC360 Facebook Post, that the data on which they were basing the statement "does not represent all cases and/or procedures performed as part of the program" and that "the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program."

612. Defendants CNN and Cooper published this statement with actual malice in that they published it even though they were specifically informed of its falsity numerous times, including in February 2015, over three months before they published the June 1 AC360 Facebook Post, when they were expressly told, among other things, that the Society of Thoracic Surgeons—which they admit is the "gold standard" for benchmarking pediatric cardiac surgical programs—awarded the St. Mary's Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United

States), meaning that the St. Mary's Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary's Program's risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black's and the Program's mortality rate and the national average mortality rate.

613. Defendants CNN and Cooper published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of that statement.

614. Defendants CNN and Cooper published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

615. Defendants CNN and Cooper published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

616. Defendants CNN and Cooper continue to make the June 1 AC360 Facebook Post available to a nationwide and global audience on Facebook—where it remains available to this day—even after again being specifically informed multiple times that their statement was false and defamatory, thereby further demonstrating that they published the statement with actual malice.

617. Defendants CNN and Cooper failed and refused to retract or correct their false and defamatory statement after they were specifically informed that the statement is false and

defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published the statement with actual malice.

618. Defendants CNN's and Cooper's publication of this false and defamatory statement was negligent at a minimum.

619. Defendants CNN and Cooper made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

620. Defendants CNN and Cooper had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

621. This defamatory statement has been repeated numerous times, which was reasonably foreseeable to Defendants CNN and Cooper, particularly because CNN is a national news organization with a broad audience across the United States and across the world and the Anderson Cooper 360 Facebook account has over 1,232,175 "likes." Specifically the June 1 AC360 Facebook Post has been "liked" at least 595 times, and "shared" at least 329 times, and commented on at least 111 times, which was also reasonably foreseeable to Defendants CNN and Cooper. At the time Defendants CNN and Cooper posted the June 1 AC360 Facebook Post, they knew that this statement would be republished and disseminated to new, larger audiences. At the time Defendants CNN and Cooper posted the June 1 AC360 Facebook Post, they knew that this statement would be republished and disseminated to new, larger audiences.

622. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;

- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

623. Defendants CNN and Cooper are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

624. Defendants CNN and Cooper may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT EIGHTEEN – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE
JUNE 2 CNN HEALTH FACEBOOK POST
(AGAINST DEFENDANTS CNN AND COHEN)**

625. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

626. Defendants CNN and Cohen published false and defamatory statements about Dr. Black in their June 2, 2015 post on Facebook (the “June 2 CNN Health Facebook Post”) through CNN Health’s Facebook account. This Facebook post links to the June 1, 2015 article “Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital” (the “June 1 Article”) and contains the following false and defamatory statement of fact: “The mortality rate for babies having heart surgery at St. Mary’s Medical Center was three times the national average from 2011-2013.”

627. This statement of fact is of and concerning Dr. Black. The June 2 CNN Health Facebook Post links to—and thereby incorporates—and is intended to publicize the June 1 Article, which makes clear that Dr. Black was the person who performed the pediatric cardiac

surgeries at St. Mary's for which Defendants CNN and Cohen claimed a mortality rate of more than three times the national average.

628. This statement is reasonably understood to be statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

629. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

630. This statement is false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

631. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

632. By publication of this statement, Defendants CNN and Cohen did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

633. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

634. Defendants CNN and Cohen published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for their truth or falsity. Defendants CNN and Cohen did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

635. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed in February 2015, over three months before they published the June 2 CNN Health Facebook Post, that the data on which they were basing the statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

636. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed of its falsity numerous times, including in February 2015, over three months before they published the June 2 CNN Health Facebook Post, when they were expressly told, among other things, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

637. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of that statement.

638. Defendants CNN and Cohen published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

639. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

640. Defendants CNN and Cohen continue to make the June 2 CNN Health Facebook Post available to a nationwide and global audience on Facebook—where it remains available to this day—even after again being specifically informed multiple times that their statement was false and defamatory, thereby further demonstrating that they published the statement with actual malice.

641. Defendants CNN and Cohen failed and refused to retract or correct their false and defamatory statement after they were specifically informed that the statement is false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published the statement with actual malice.

642. Defendants CNN's and Cohen's publication of this false and defamatory statement was negligent at a minimum.

643. Defendants CNN and Cohen made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

644. Defendants CNN and Cohen had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

645. This defamatory statement has been repeated numerous times, which was reasonably foreseeable to Defendants CNN and Cohen, particularly because CNN is a national news organization with a broad audience across the United States and across the world and over 252,325 "likes" for its CNN Health Facebook page. Specifically the June 2 CNN Health Facebook Post has been "liked" 13 times, "shared," and commented on. At the time Defendants CNN and Cohen posted the June 2 CNN Health Facebook Post, they knew that this statement would be republished and disseminated to new, larger audiences. At the time Defendants CNN and Cohen posted the June 2 CNN Health Facebook Post, they knew that this statement would be republished and disseminated to new, larger audiences.

646. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

647. Defendants CNN and Cohen are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

648. Defendants CNN and Cohen may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT NINETEEN – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE JUNE 5 CNN HEALTH TWEET
(AGAINST DEFENDANTS CNN AND COHEN)**

649. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

650. Defendants CNN and Cohen published false and defamatory statements about Dr. Black in their June 5, 2015 post on Twitter (the “June 5 CNN Health Tweet”) through CNN Health’s Twitter account, @cnnhealth. This tweet links to the June 5, 2015 article “CNN Report on High Mortality Rate for Babies at Florida Hospital Leads to Inquiry” (the “June 5 Article”), and contains the following false and defamatory statement of fact: A graphic titled “Death Rate 2011-2013 Pediatric Open Heart Surgery” claiming that “St. Mary’s” had a “death rate” of “12.5%” compared to a “National Average” “death rate” of “3.3%.”.

651. This statement of fact is of and concerning Dr. Black. The June 5 CNN Health Tweet links to—and thereby incorporates—and is intended to publicize the June 5 Article, which expressly references the CNN Defendants’ “investigation” of Dr. Black and St. Mary’s and links to the June 1 Article that further makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

652. This statement is reasonably understood to be a statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

653. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

654. This statement is false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

655. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

656. By publication of this statement, Defendants CNN and Cohen did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

657. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

658. Defendants CNN and Cohen published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for its truth or falsity. Defendants CNN and Cohen did so in order to further a

preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

659. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed of its falsity numerous times, including in February 2015, over three months before they published the June 5 CNN Health Tweet, when they were expressly told, among other things, that the data on which they were basing the statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

660. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed in February 2015, over three months before they published the June 5 CNN Health Tweet, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

661. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of that statement.

662. Defendants CNN and Cohen published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

663. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

664. Defendants CNN and Cohen continue to make the June 5 CNN Health Tweet available to a nationwide and global audience on Twitter—where it remains available to this day—even after again being specifically informed multiple times that their statement was false and defamatory, thereby further demonstrating that they published the statement with actual malice.

665. Defendants CNN and Cohen failed and refused to retract or correct their false and defamatory statement after they were specifically informed that the statement is false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published the statement with actual malice.

666. Defendants CNN's and Cohen's publication of this false and defamatory statement was negligent at a minimum.

667. Defendants CNN and Cohen made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

668. Defendants CNN and Cohen had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

669. This defamatory statement has been repeated numerous times, which was reasonably foreseeable to Defendants CNN and Cohen, particularly because CNN is a national news organization with a broad audience across the United States and across the world and because the CNN Health Twitter account has and over 387,000 Twitter followers and the CNN Twitter account has over 23.1 million Twitter followers. Specifically, the June 5 CNN Health Tweet has been retweeted 15 times to date and linked as a favorite tweet by 6 Twitter members, which was reasonably foreseeable to Defendants CNN and Cohen. At the time Defendants CNN and Cohen posted the June 5 CNN Health Tweet, they knew that this statement would be republished and disseminated to new, larger audiences.

670. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

671. Defendants CNN and Cohen are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

672. Defendants CNN and Cohen may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT TWENTY – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE
JUNE 5 CNN HEALTH FACEBOOK POST
(AGAINST DEFENDANTS CNN AND COHEN)**

673. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

674. Defendants CNN and Cohen published false and defamatory statements about Dr. Black in their June 5, 2015 post on Facebook (the “June 5 CNN Health Facebook Post”) through CNN Health’s Facebook account. This Facebook post links to the June 5, 2015 article “CNN Report on High Mortality Rate for Babies at Florida Hospital Leads to Inquiry” (the “June 5 Article”) and contains the following false and defamatory statement of fact: A graphic titled “Death Rate 2011-2013 Pediatric Open Heart Surgery” claiming that “St. Mary’s” had a “death rate” of “12.5%” compared to a “National Average” “death rate” of “3.3%.”.

675. This statement of fact is of and concerning Dr. Black. The June 5 CNN Health Facebook Post links to—and thereby incorporates—and is intended to publicize the June 5 Article, which expressly references the CNN Defendants’ “investigation” of Dr. Black and St. Mary’s and links to the June 1 Article that further makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

676. This statement is reasonably understood to be statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

677. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

678. This statement is false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

679. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

680. By publication of this statement, Defendants CNN and Cohen did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

681. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

682. Defendants CNN and Cohen published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for their truth or falsity. Defendants CNN and Cohen did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

683. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed of its falsity numerous times, including in February 2015, over three months before they published the June 5 CNN Health Facebook Post, when they were expressly told, among other things, that the data on which they

were basing the statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

684. Defendants CNN and Cohen published this statement with actual malice in that they published them even though they were specifically informed in February 2015, over three months before they published the June 5 CNN Health Facebook Post, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

685. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of that statement.

686. Defendants CNN and Cohen published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary’s to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

687. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

688. Defendants CNN and Cohen failed and refused to retract or correct their false and defamatory statement after they were specifically informed that the statement is false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published the statement with actual malice.

689. Defendants CNN's and Cohen's publication of this false and defamatory statement was negligent at a minimum.

690. Defendants CNN and Cohen made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

691. Defendants CNN and Cohen had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

692. This defamatory statement has been repeated numerous times, which was reasonably foreseeable to Defendants CNN and Cohen, particularly because CNN is a national news organization with a broad audience across the United States and across the world and over 252,325 "likes" for its CNN Health Facebook page. Specifically the June 5 CNN Health Facebook Post has been "liked" 24 times, which was reasonably foreseeable to Defendants CNN and Cohen. At the time Defendants CNN and Cohen posted the June 5 CNN Health Facebook Post, they knew that this statement would be republished and disseminated to new, larger audiences.

693. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

694. Defendants CNN and Cohen are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

695. Defendants CNN and Cohen may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT TWENTY-ONE – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE JUNE 6 PAUL TWEET
(AGAINST DEFENDANT CNN)**

696. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

697. Christi Paul, with the encouragement and approval of Defendant CNN published a false and defamatory statement about Dr. Black in a June 6, 2015 post on Twitter (the "June 6 Paul Tweet") through her Twitter account, @Christi_Paul. This tweet links to the June 1, 2015 article "Secret Deaths: CNN Finds High Surgical Death Rate for Children at a Florida Hospital" (the "June 1 Article") and contains the following false and defamatory statement of fact: "The mortality rate for babies having open heart surgery at St. Mary's Medical Center was three times the national average from 2011-2013."

698. This statement of fact is of and concerning Dr. Black. The June 6 Paul Tweet links to—and thereby incorporates—and is intended to publicize the CNN Defendants’ June 1 Article on pediatric cardiac surgeries at St. Mary’s, which makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendant CNN claimed a mortality rate of more than three times the national average.

699. This statement is reasonably understood to be a statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

700. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

701. This statement is false. Dr. Black and St. Mary’s pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality (“death”) rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

702. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from the statement is readily apparent. The statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or has a tendency to injure Dr. Black in his office, occupation, business, or employment.

703. By publication of this statement, Defendant CNN did cause harm to Dr. Black’s reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

704. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

705. Defendant CNN published this statement with actual malice in that it had knowledge that the statement was false or it published the statement with reckless disregard for its truth or falsity. Defendants CNN and Paul did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

706. Defendant CNN published this statement with actual malice in that it published it even though it was specifically informed in February 2015, over three months before it published the June 6 Paul Tweet, that the data on which they were basing the statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

707. Defendant CNN published this statement with actual malice in that it published it even though it was specifically informed of its falsity numerous times, including in February 2015, over three months before it published the June 6 Paul Tweet, when it was expressly told that the Society of Thoracic Surgeons—which it admits is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States), meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1

and there is no statistically significant difference between Dr. Black's and the Program's mortality rate and the national average mortality rate.

708. Defendant CNN published this statement with actual malice in that it purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of that statement.

709. Defendant CNN published this statement with actual malice in that it knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

710. Defendant CNN published this statement with actual malice in that it purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

711. Defendant CNN continues to make the June 6 Paul Tweet available to a nationwide and global audience on Twitter—where it remains available to this day—even after again being specifically informed multiple times that their statement was false and defamatory, thereby further demonstrating that it published the statement with actual malice.

712. Defendant CNN failed and refused to retract or correct its false and defamatory statement after it was specifically informed that the statement is false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published the statement with actual malice.

713. Defendant CNN's publication of this false and defamatory statement was negligent at a minimum.

714. Defendant CNN made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

715. Defendant CNN had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

716. This defamatory statement has been repeated numerous times, which was reasonably foreseeable to Defendant CNN, particularly because CNN is a national news organization with a broad audience across the United States and across the world and Defendant Paul has over 33,925 Twitter followers. Specifically, the June 6 Paul Tweet has been retweeted 7 times to date and linked as a favorite tweet by 13 Twitter members, which was reasonably foreseeable to Defendant CNN. At the time Paul, with the support and encouragement of Defendant CNN, published the June 6 Paul Tweet, Defendant CNN knew that this statement would be republished and disseminated to new, larger audiences.

717. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (e) By causing Dr. Black damages in other ways yet to be determined.

718. Defendant CNN is liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

719. Defendants CNN may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of its defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT TWENTY-TWO – DEFAMATION
FOR PUBLICATION OF STATEMENTS IN THE JUNE 8 CNN HEALTH TWEET
(AGAINST DEFENDANTS CNN AND COHEN)**

720. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

721. Defendants CNN and Cohen published a false and defamatory statement about Dr. Black in their June 8, 2015 post on Twitter (the “June 8 CNN Health Tweet”) through CNN Health’s Twitter account, @cnnhealth. This tweet links to the June 8, 2015 article “Hospital Suspends Elective Heart Surgeries on Children After CNN Investigation” (the “June 8 Article”), and contains the following false and defamatory statement of fact: “At a Florida hospital, children died after open heart surgery at a rate more than **3X** the national average.” (emphasis in original).

722. This statement of fact is of and concerning Dr. Black. The June 8 CNN Health Tweet links to—and thereby incorporates—and is intended to publicize the June 8 Article, which expressly references the CNN Defendants’ “investigation” of Dr. Black and St. Mary’s and links to the June 5 Article and June 1 Article that further makes clear that Dr. Black was the person who performed the pediatric cardiac surgeries at St. Mary’s for which Defendants CNN, Cohen, and Bonifield claimed a mortality rate of more than three times the national average.

723. This statement is reasonably understood to be statement of and concerning Dr. Black and was in fact understood by persons reading it to be a statement of and concerning Dr. Black.

724. This statement is reasonably understood to be a statement of fact regarding Dr. Black and was reasonably understood by persons reading it to be a statement of fact regarding Dr. Black.

725. This statement is false. Dr. Black and St. Mary's pediatric cardiac surgery program did not have a mortality or death rate more than three times the national average cited by the Society of Thoracic Surgeons; rather, at all relevant times, there was no statistically significant difference between their mortality ("death") rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons.

726. This statement is defamatory. Indeed, the substantial danger of injury to Dr. Black's reputation from this statement is readily apparent. This statement would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

727. By publication of this statement, Defendants CNN and Cohen did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

728. This statement is defamatory *per se* because it tends to subject, and has indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace, and because it tends to injure, and indeed has injured, Dr. Black in his trade or profession.

729. Defendants CNN and Cohen published this statement with actual malice in that they had knowledge that this statement was false or they published the statement with reckless disregard for its truth or falsity. Defendants CNN and Cohen did so in order to further a preconceived narrative about patients being denied proper medical care and to attract a greater audience in an increasingly competitive news market and thereby earn greater profits.

730. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed of its falsity numerous times, including in February 2015, over three months before they published the June 8 CNN Health Tweet, when they were expressly told, among other things, that the data on which they were basing the statement “does not represent all cases and/or procedures performed as part of the program” and that “the mortality rate that you have manually calculated is inaccurate, as it is calculated as a percentage of only a portion of heart operations performed by the program.”

731. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed in February 2015, over three months before they published the June 8 CNN Health Tweet, that the Society of Thoracic Surgeons—which they admit is the “gold standard” for benchmarking pediatric cardiac surgical programs—awarded the St. Mary’s Program a two-star rating (along with all other such programs in the State of Florida and nearly two-thirds of similar programs across the United States) meaning that the St. Mary’s Program had the same risk-adjusted observed-to-expected operative mortality ratio, for all patients undergoing pediatric and/or congenital cardiac surgery as is expected; in other words, the 95% confidence interval for the St. Mary’s Program’s risk-adjusted operative/expected mortality ratio overlapped with the number 1 and there is no statistically significant difference between Dr. Black’s and the Program’s mortality rate and the national average mortality rate.

732. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of that statement.

733. Defendants CNN and Cohen published this statement with actual malice in that they published it even though they were specifically informed yet again on June 7, 2015 that that statement was false and defamatory.

734. Defendants CNN and Cohen published this statement with actual malice in that they knowingly, intentionally, and misleadingly presented and compared data regarding an incorrect, non-risk-adjusted mortality rate for highly complicated open-heart surgeries performed by Dr. Black at St. Mary's to an STS mortality rate for both open-heart surgeries *and* far less complicated closed-heart surgeries that generally have a far lower mortality rate.

735. Defendants CNN and Cohen published this statement with actual malice in that they purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of the statement.

736. Defendants CNN and Cohen continue to make the June 8 CNN Health Tweet available to a nationwide and global audience on Twitter—where it remains available to this day—even after again being specifically informed multiple times that their statement was false and defamatory, thereby further demonstrating that they published the statement with actual malice.

737. Defendants CNN and Cohen failed and refused to retract or correct their false and defamatory statement after they were specifically informed that the statement is false and defamatory and specifically asked to retract or correct it, thereby further demonstrating that they published the statement with actual malice.

738. Defendants CNN's and Cohen's publication of this false and defamatory statement was negligent at a minimum.

739. Defendants CNN and Cohen made this defamatory statement intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

740. Defendants CNN and Cohen had no applicable privilege or legal authorization to publish this false and defamatory statement or, if they did, they abused that privilege.

741. This defamatory statement has been repeated numerous times, which was reasonably foreseeable to Defendants CNN and Cohen, particularly because CNN is a national news organization with a broad audience across the United States and across the world and because the CNN Health Twitter account has and over 387,000 Twitter followers and the CNN Twitter account has over 23.1 million Twitter followers. Specifically, the June 8 CNN Health Tweet has been retweeted 22 times to date and linked as a favorite tweet by 7 Twitter members, which was reasonably foreseeable to Defendants CNN and Cohen. At the time Defendants CNN and Cohen posted the June 8 CNN Health Tweet, they knew that this statement would be republished and disseminated to new, larger audiences.

742. In addition to injuries presumed by law, this defamatory falsehood has injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By causing Dr. Black to lose employment opportunities;
- (d) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and

743. By causing Dr. Black damages in other ways yet to be determined.

744. Defendants CNN and Cohen are liable to Dr. Black for compensatory damages arising out of their defamation of Dr. Black.

745. Defendants CNN and Cohen may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of their defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT TWENTY-THREE – DEFAMATION
FOR STATEMENTS ACCUSING DR. BLACK OF KILLING BABIES
AND COMMITTING CRIMES AND PROFESSIONAL MALFEASANCE
(AGAINST DEFENDANT ROBINSON)**

746. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

747. Defendant Robinson made false and defamatory statements about Dr. Black to Dr. Black's colleagues, patients, and patients' family members, as well as numerous other persons throughout 2014 and 2015.

748. Specifically, Defendant Robinson made the following false and defamatory statements of fact:

- (a) In a December 16, 2014 telephone call to a nurse and colleague of Dr. Black's at St. Mary's, Defendant Robinson stated that when operating on patients at St. Mary's, Dr. Black left those patients in "horrendous," "mangled," and "butchered" conditions.
- (b) In that same telephone call, Defendant Robinson stated that the St. Mary's Program and, by extension, Dr. Black, have an "enormous" death rate.
- (c) In that same telephone call, Defendant Robinson stated that St. Mary's and Dr. Black engaged in the "business of importing children from Trinidad and Haiti all of the sudden to perform surgeries."

- (d) On April 5, 2015, Defendant Robinson screamed to multiple persons at St. Mary's, including St. Mary's staff and patients, that "Dr. Black is a baby-killing wacko!"
- (e) On May 26, 2015, Defendant Robinson stated to family members of a patient of Dr. Black's, that Dr. Black "is killing people," that Dr. Black is "someone who kills babies," that Dr. Black "has many deaths on his hands," and that if the patient "let Dr. Black operate on [her], he will kill her."
- (f) On another occasion, Defendant Robinson screamed to patients and staff at the office of her concierge pediatrician (a past president of the Palm Beach Medical Society) that Dr. Black "kills babies," "doesn't know what he's doing" and "shouldn't be practicing medicine."

749. These statements of fact are of and concerning Dr. Black. Indeed, Defendant Robinson mentioned Dr. Black in and in conjunction with those statements.

750. These statements are reasonably understood to be statements of and concerning Dr. Black and were in fact understood by persons who heard them to be statements of and concerning Dr. Black.

751. These statements are reasonably understood to be statements of fact regarding Dr. Black and were reasonably understood by persons who heard them to be statements of fact regarding Dr. Black.

752. These statements are false. Dr. Black has never caused any patient on whom he has operated to be in "horrendous," "mangled," or "butchered" conditions. Dr. Black has never had an "enormous" surgical death rate; rather, at all relevant times, there was no statistically significant difference between Dr. Black's (and the St. Mary's Program's) mortality ("death")

rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons. Dr. Black has never engaged in the “business of importing children from Trinidad and Haiti all of the sudden to perform surgeries” or engaged in any sort of human trafficking whatsoever. Dr. Black has never “kill[ed]” and would never kill any baby or any person and does not have “death on his hands.” Dr. Black is an extensively trained and highly-qualified surgeon who knows what he is doing when he operates, and has never performed surgery recklessly, wantonly, and/or with anything less than the highest standard of care.

753. These statements are defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from these statements is readily apparent. These statements would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

754. By making these statements, Defendant Robinson did cause harm to Dr. Black’s reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

755. These statements are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace.

756. These statements are defamatory *per se* because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

757. These statements are defamatory *per se* because they impute the commission of a crime to Dr. Black, namely, murder, homicide, reckless endangerment, and/or human trafficking.

758. Defendant Robinson published these statements with actual malice in that she had knowledge that they were false or made them with reckless disregard for their truth or falsity. Defendant Robinson did so as part of her efforts to assist the CNN Defendants in their “investigation” for their defamatory articles and video reports and to damage Dr. Black and

St. Mary's, who she viewed as competitors of Nicklaus (Miami) Children's Hospital and its pediatric cardiac surgery program, of which she is a large supporter.

759. Defendant Robinson made these statements with actual malice in that she purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

760. Defendant Robinson's publication of these false and defamatory statements was negligent at a minimum.

761. Defendant Robinson made these defamatory statements intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

762. Defendant Robinson had no applicable privilege or legal authorization to publish these false and defamatory statements or, if she did, she abused that privilege.

763. These defamatory statements made by Defendant Robinson and/or the implications conveyed by those statements have been repeated and republished in various media outlets, which was reasonably foreseeable to Defendant Robinson, particularly given the serious nature of the allegations she made about Dr. Black and given her involvement with CNN in its "investigation" of Dr. Black and St. Mary's. Upon information and belief, at the time Defendant Robinson made these defamatory statements she knew that they would be repeated, republished, and/or disseminated to new, larger audiences.

764. In addition to injuries presumed by law, these defamatory falsehoods have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black's professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By accusing Dr. Black of committing crimes;

- (d) By causing Dr. Black to lose employment opportunities;
- (e) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (f) By causing Dr. Black damages in other ways yet to be determined.

765. Defendant Robinson is liable to Dr. Black for compensatory damages arising out of her defamation of Dr. Black.

766. Defendant Robinson may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of the defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

**COUNT TWENTY-FOUR – DEFAMATION BY IMPLICATION
FOR STATEMENTS ACCUSING DR. BLACK OF KILLING BABIES
AND COMMITTING CRIMES AND PROFESSIONAL MALFEASANCE
(AGAINST DEFENDANT ROBINSON)**

767. Plaintiff repeats and re-alleges the allegations in Paragraphs 1-212 as if set forth fully herein.

768. Through a series of false and defamatory statements about Dr. Black to Dr. Black's colleagues, patients, and patients' family members, as well as numerous other persons throughout 2014 and 2015, Defendant Robinson falsely implied to those persons that Dr. Black is an incompetent, dishonest, and inexperienced doctor who is unfit to be a pediatric cardiac surgeon, who recklessly operates on young children, and who has caused the deaths of many of those children. Defendant Robinson did this by, among other things:

- (a) Stating, in a December 16, 2014 telephone call to a nurse and colleague of Dr. Black's at St. Mary's, that when operating on patients at St. Mary's, Dr. Black left those patients in "horrendous," "mangled," and "butchered" conditions.

- (b) Stating, in that same telephone call, that the St. Mary's Program and, by extension, Dr. Black, have an "enormous" death rate, when she knew that Dr. Black's and the St. Mary's Program's mortality rate was not statistically different from the STS national average.
- (c) Stating, also in that same telephone call, that St. Mary's and Dr. Black engaged in the "business of importing children from Trinidad and Haiti all of the sudden to perform surgeries," and thereby falsely suggesting that Dr. Black improperly sought out children and performed unnecessary surgeries on them.
- (d) Screaming, on April 5, 2015, to multiple persons at St. Mary's, including St. Mary's staff and patients, that "Dr. Black is a baby-killing wacko!"
- (e) Stating, on May 26, 2015, to family members of a patient of Dr. Black's that Dr. Black "is killing people," that Dr. Black is "someone who kills babies," that Dr. Black "has many deaths on his hands," and that if that patient "let Dr. Black operate on [her], he will kill her."
- (f) Screaming, on another occasion, to patients and staff at the office of her concierge pediatrician (a past president of the Palm Beach Medical Society) that Dr. Black "kills babies," "doesn't know what he's doing" and "shouldn't be practicing medicine."

769. These statements and the implications they conveyed are of and concerning Dr. Black. Indeed, Defendant Robinson mentioned Dr. Black in and in conjunction with those statements.

770. These statements and the implications they conveyed are reasonably understood to be statements and implications of and concerning Dr. Black and were in fact understood by persons who heard them to be statements and implications of and concerning Dr. Black.

771. These statements and the implications they conveyed are reasonably understood to be statements and implications of fact regarding Dr. Black and were reasonably understood by persons who heard them to be statements and implications of fact regarding Dr. Black.

772. These statements and the implications they conveyed are false. Dr. Black has never caused any patient on whom he has operated to be in “horrendous,” “mangled,” or “butchered” conditions. Dr. Black has never had an “enormous” surgical death rate; rather, at all relevant times, there was no statistically significant difference between Dr. Black’s (and the St. Mary’s Program’s) mortality (“death”) rate and the national average mortality rate as calculated by the Society of Thoracic Surgeons. Dr. Black has never engaged in the “business of importing children from Trinidad and Haiti all of the sudden to perform surgeries” or engaged in any sort of human trafficking whatsoever. Dr. Black has never “kill[ed]” and would never kill any baby or any person and does not have “death on his hands.” Dr. Black is an extensively trained and highly-qualified surgeon who knows what he is doing when he operates, and has never performed surgery recklessly, wantonly, and/or with anything less than the highest standard of care.

773. These statements and the implications they conveyed are defamatory. Indeed, the substantial danger of injury to Dr. Black’s reputation from these statements and implications is readily apparent. These statements and the implications they conveyed would expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy or cause Dr. Black to be avoided, or have a tendency to injure Dr. Black in his office, occupation, business, or employment.

774. By making these statements and the implications they conveyed, Defendant Robinson did cause harm to Dr. Black's reputation, expose Dr. Black to distrust, hatred, contempt, ridicule, or obloquy, cause Dr. Black to be avoided, and injure Dr. Black in his office, occupation, business, or employment.

775. These statements and the implications they conveyed are defamatory *per se* because they tend to subject, and have indeed subjected, Dr. Black to hatred, distrust, ridicule, contempt, or disgrace.

776. These statements and the implications they conveyed are defamatory *per se* because they tend to injure, and indeed have injured, Dr. Black in his trade or profession.

777. Defendant Robinson made these statements and implications with actual malice in that she had knowledge that they were false or made them with reckless disregard for their truth or falsity. Defendant Robinson did so as part of her efforts to assist the CNN Defendants in their "investigation" for their defamatory articles and video reports and to damage Dr. Black and St. Mary's, who she viewed as competitors of Nicklaus (Miami) Children's Hospital and its pediatric cardiac surgical program, of which she is a large supporter.

778. Defendant Robinson made these statements and implications with actual malice in that she purposefully avoided and recklessly disregarded publicly available information demonstrating the falsity of those statements.

779. Defendant Robinson's publication of these false and defamatory statements and implications was negligent at a minimum.

780. Defendant Robinson made these defamatory statements and implications intentionally, willfully, maliciously, and in conscious disregard of Dr. Black's rights and reputation and also of the truth.

781. Defendant Robinson had no applicable privilege or legal authorization to publish these false and defamatory statements and implications or, if she did, she abused that privilege.

782. These defamatory statements and implications have been repeated and republished in various media outlets, which was reasonably foreseeable to Defendant Robinson, particularly given the serious nature of the allegations she made about Dr. Black and given her involvement with CNN in its “investigation” of Dr. Black and St. Mary’s. Upon information and belief, at the time Defendant Robinson made these defamatory statements and implications she knew that they would be republished and disseminated to new, larger audiences.

783. In addition to injuries presumed by law, these defamatory statements and implications have injured—and will continue to injure—Dr. Black in at least the following ways:

- (a) By impugning Dr. Black’s professional and personal reputations;
- (b) By ascribing to Dr. Black conduct that would adversely affect his fitness for proper conduct as a medical doctor and surgeon;
- (c) By accusing Dr. Black of committing crimes;
- (d) By causing Dr. Black to lose employment opportunities;
- (e) By subjecting Dr. Black to unwanted attention, harassment, and persecution; and
- (f) By causing Dr. Black damages in other ways yet to be determined.

784. Defendant Robinson is liable to Dr. Black for compensatory damages arising out of her defamation of Dr. Black.

785. Defendant Robinson may also be subject to liability to Dr. Black for punitive damages because of the wanton and outrageous nature of the defamation, and Dr. Black reserves his right to move for leave to seek punitive damages at the appropriate time.

DEFENDANTS' CONDUCT MAY WARRANT PUNITIVE DAMAGES

786. Defendants' conduct may warrant the imposition of punitive damages, and Dr. Black may, at the appropriate time, seek leave to seek punitive damages. The actions or omissions of Defendants set forth in this Complaint demonstrate common law express malice, actual malice, egregious defamation, and insult. Such actions or omissions by Defendants were undertaken with (1) maliciousness, spite, ill will, vengeance, and/or deliberate intent to harm Dr. Black, and (2) reckless disregard of the falsity of their speech and its effects on Dr. Black. Specifically, the factors that may justify punitive damages include, at a minimum, the following:

- (a) Defendants knowingly made false and defamatory statements about Dr. Black or, at the very least, made those statements with reckless disregard for their truth or falsity, thereby acting with actual malice;
- (b) Defendants knew that their false and defamatory statements about Dr. Black would infringe his rights and damage his reputation, ability to continue to perform his trade as a pediatric cardiothoracic surgeon and medical doctor, and his prospects for future employment;
- (c) Defendants made false and defamatory statements about Dr. Black with common law express malice;
- (d) Defendants engaged in willful, wanton, and intentional misconduct in making false and defamatory statements about Dr. Black;
- (e) Defendants intentionally ignored, purposefully avoided, and recklessly disregarded information available to them that rebutted their false statements about Dr. Black;
- (f) Despite being informed multiple times and learning before the publication of their defamatory statements—and being informed again multiple times

after their publication of those statements—that their statements about Dr. Black were and are false and defamatory, Defendants have refused to retract or correct their false statements and instead have doubled-down and re-published them multiple times to nationwide and global audiences. The articles, news reports, and social media posts containing the CNN Defendants’ defamatory statements about Dr. Black remain available to a worldwide audience today on CNN’s website and on the Defendants’ social media webpages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Michael D. Black, MD, MBA respectfully requests that the Court enter judgment in Plaintiff’s favor, and against Defendants, as follows:

- (1) Actual and presumed damages in an amount to be specifically determined at trial; and
- (2) All costs, disbursements, fees, and interest as authorized by Florida Law and Rules; and
- (3) Such other and additional remedies as the Court may deem just and proper.

PRAYER FOR RELIEF

Plaintiff requests a jury trial on all issues and counts triable to a jury.

Dated: February 16, 2016

Respectfully Submitted,

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