

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

PRISMA Health – Midlands, f/k/a Palmetto Health,

Civil Action No.: 2020-CP-40-03050

Plaintiff,

vs.

**ANSWER
AND
COUNTERCLAIMS
(Jury Trial Demanded)**

South Carolina OB-GYN Associates, P.A.;
Mark H. Salley, M.D.; David C. Holladay,
M.D.; James W. Stands, M.D.; M. Tucker
Laffitte, III, M.D.; Thomas P. Guidice, M.D.;
Robert P. Grumbach, M.D.; and, Rebecca B.
Ridenhour, M.D.

Defendants.

Defendants, South Carolina OB-GYN Associates, P.A., (“SC OB-GYN”), Mark H. Salley, M.D., David C. Holladay, M.D., James W. Stands, M.D., M. Tucker Laffitte, III, M.D., Thomas P. Guidice, M.D., Robert P. Grumbach, M.D. and Rebecca B. Ridenhour, M.D. (collectively, the “SC OB-GYN doctors”) generally deny the allegations of the Complaint and that Plaintiff is entitled to the relief sought therein, and in further answer to the Complaint of Plaintiff PRISMA Health – Midlands, f/k/a Palmetto Health (hereinafter “Landlord” or “Plaintiff”), would show as follows:

BACKGROUND FACTS:

1. Baptist Hospital was for decades the premier hospital in the Midlands of South Carolina and boasted widespread recognition, particularly for its obstetrics and gynecology department.

2. Defendant SC OB-GYN Associates, PA (including its predecessors) has been in existence for over sixty years, and was associated with Baptist Hospital for all that time, until recently. The individual doctors who have been sued in this case by PRISMA Health-Midlands are the physicians who practice in SC OB-GYN and who for decades dedicated their professional lives to the success and good reputation of Baptist Hospital. None has ever practiced elsewhere. Most have served as chairs of the OB-GYN Departments when one existed. Two of the doctors served as Chief of the Medical Staff at Baptist Hospital.

3. In 1998, the Baptist Hospital merged with Richland Memorial Hospital to become Palmetto Health, consisting of Palmetto Baptist and Palmetto Richland. Subsequently, Palmetto Health built Parkridge Baptist Hospital in 2014 and acquired Sumter's Toumey Hospital in 2016.

4. In 2017, Palmetto Health and Greenville Health System merged to create PRISMA Health, of which the Plaintiff, PRISMA Health–Midlands is a part. On information and belief PRISMA Health Baptist, the former Baptist Hospital is a part of Plaintiff entity.

5. Thus, the Plaintiff is an amalgamation of several hospital systems which began with Baptist Hospital in downtown Columbia, the nearby Richland Memorial Hospital and hospitals in the upstate of South Carolina known as the Greenville Hospital System.

6. SC OB-GYN's practice at Baptist Hospital spans over two generations, with three of the physicians in the group having succeeded their fathers in their medical practices. Combined, they have delivered literally tens of thousands of babies at Baptist Hospital. Some of their patient families span four generations.

7. Defendant Mark H. Salley, MD was born at Baptist Hospital, worked there in college and medical school, and spent over thirty (30) years proudly representing the Hospital and his practice. His father was one of the founders of SC OB-GYN's practice and invested fifty (50)

years building its exceptional reputation. Other SC OB-GYN doctors have had their children and grandchildren delivered there.

8. M. Tucker Laffitte, Jr., M.D., the father of Defendant M. Tucker Laffitte, III, M.D., was also a founding member of SC OB-GYN who proudly practiced for over forty years at Baptist Hospital. The current Dr. Laffitte has never practiced anywhere else, and never expected to do so.

9. For decades, the SC OB-GYN doctors practiced in office space, the subject of this dispute, which was physically attached to the Baptist Hospital, which it leased from Baptist Hospital, and thereafter Palmetto Health, now PRISMA Health-Midlands.

10. A necessary requirement of the practice of SC OB-GYN and its doctors was that the adjacent Baptist Hospital would be a full-service and highly-rated health care facility.

11. The purpose of the Hospital was to lease to physicians who would be using Hospital facilities and who needed to be close to the Hospital. This win-win situation worked for decades. Implicit in the terms of the leases and integral to the leased space was that the Landlord (Baptist Hospital), would continue to provide an attached safe, first-class, highly rated hospital.

12. In fact, the doctors were considered “in the hospital” in their space, allowing for the administration of certain drugs and epidurals in the office because of immediate proximity to the Hospital.

13. Prior to the merger with Richland Memorial, Baptist Hospital’s nursing staff was an exceptionally stable, experienced, dedicated, and patient-driven team of professionals. Many nurses worked for the entirety of their careers, and thought of working at Baptist Hospital as a Badge of Honor. The facilities were thought to be first-class and impeccable.

14. Following its merger with Richland Memorial Hospital, Baptist Hospital retained control of its operations for a number of years but, as time crept on, there has been a dramatic decline in the quality of care provided to the hospital's patients.

15. In the years following the Baptist-Richland merger, many experienced nurses, some of whom had worked with Baptist Hospital for over forty (40) years, were incentivized to leave and were either replaced by less experienced individuals, or not replaced at all.

16. Following the Baptist – Richland merger, morale among the nursing staff, physicians and in the organization as a whole deteriorated and the quality of nursing care showed a significant decline as short-staffed, overworked nurses were less effective in providing satisfactory patient care and satisfaction.

17. In addition, the Palmetto Health administration allowed the Baptist Hospital building itself to become neglected, with patient rooms being left unclean and unsanitary.

18. Despite the perceptible and significant decline in the Baptist Hospital's quality of operations and patient care, Palmetto Health continued to expand.

19. On February 1, 2016, then-Palmetto Health, as "Landlord," and SC OB-GYN, as "Tenant," entered into two Lease Agreements (the "Leases") for the office space in which the Defendants had practiced for decades connected to the Baptist Hospital, including an expansion of that space.

20. As always, an implicit, integral component of the leased premises was that it would be connected to a first-class, highly-rated hospital, and one in which patient safety and care would be the highest priority.

21. Prior to signing the Leases in 2016, several of the SC OB-GYN doctors met with senior executives of the Palmetto Health administration to express their concerns with what they saw as a decline in the facilities and patient care at Baptist Hospital.

22. These Palmetto Health officials expressly reassured the doctors that their concerns would be addressed, and agreed with Defendants that if the Defendants were not satisfied with the quality of patient care, they could leave the Premises without any penalty and would be released from their obligations under the Leases, recognizing the inherent requirement for patient safety as being the highest priority.

23. Relying upon the representations made by senior Palmetto Health management, and with their loyalty to Baptist Hospital and desire to maintain their historical place of practice, the Defendants agreed to proceed with renewing their tenancy at Baptist Hospital, with the optimism and good-faith belief that material changes would take place as promised.

24. After receiving these assurances from senior management and, in reliance, the execution of Leases, the SC OB-GYN doctors witnessed an even more startling decline in the Hospital's administration, staffing and patient safety. For example, the doctors experienced or observed the following:

- a. One of the SC OB-GYN doctors required assistance with the diabetes protocol implemented by Palmetto Health for a post-operative patient and could not find anyone in the recovery room, or the GYN floor, who knew how the diabetes protocol was to be utilized.
- b. In September of 2019, one of the SC OB-GYN doctors attempted to confirm with nursing staff that a patient was indeed the correct patient requiring care for a hysterectomy. The Operating Room nurse circulator did not know who

the patient's doctor was, why the patient was there, or what surgery was planned.

- c. Inexperienced nurses allowed a patient to bleed overnight which resulted in a decreased and dangerous hemoglobin level of 5.0 g/dl (a normal hemoglobin level being between 12.0 to 15.5 g/dl). Nursing staff failed to properly monitor or discover the condition because of short staff in the department and no physician was notified of the patient's precarious condition.
- d. A bleeding ectopic patient from the ER was prepped to go to the operating room but continued to lose blood because no operating room nurses were available to assist, despite the surgeon and anesthesiologist being ready to proceed with the procedure. Ectopic pregnancies are one of the leading causes of maternal deaths. The emergency operation was delayed over one hour, at substantial risk to the patient because of understaffing.
- e. A nurse refused to follow an order dictated by a physician, her only rationale being she is not required to do what a physician instructs. She has since been promoted to the position of charge nurse.
- f. At least four long-term employees in the recovery room quit because of inadequate staffing and the resulting overload in their responsibilities and duties, and the stress associated with a lack of staffing. New nurses have trouble identifying basic instruments when requested by physicians during operative procedures.

- g. In one instance, a woman gave birth with only traveling nurses staffing the unit and no nurse came in the room between 9:00AM and 7:00PM to assess the health or status of the patient.
- h. SC OB-GYN doctors frequently require that a pulse oximeter be placed on each patient with patient-controlled anesthesia (PCA) in an effort to ensure that a nurse will hear an alarm if the patient has emergent event as they cannot rely on the nursing staff to perform a bedside check on patients at the recommended intervals.
- i. Nurses are not allowed to use their training and professional evaluation of a patient to determine the appropriate administration of pain medication. Instead, patients are given smiley faces and point to how much pain they are in and are automatically given pain medication doses, essentially allowing the patients to dangerously self-medicate. Some patients have experienced resulting respiratory arrests or other medically adverse consequences from an unnecessarily elevated dose of pain medication. Multiple people have overdosed and, on information and belief, there have been multiple episodes of patient morbidity and even mortality. A committee was formed by Palmetto Health to review PCA morbidity, but it never even met.
- j. Surgical instrument trays frequently exhibit rust and no back-up trays are available clearly violating the sterile procedure practices that are necessary to deliver quality care during a surgical intervention. This was discussed at

the Surgical Services Committee meetings over several months but never completely resolved.

- k. SC OB-GYN doctors have received multiple complaints from patients regarding the lack of cleanliness of their rooms at the Baptist Hospital. Upon investigation, the SC OB-GYN doctors have concluded that the sanitation and cleaning practices of Baptist Hospital are pervasive and have continued uncorrected. As a result, some patients have vowed never again to be admitted to Baptist Hospital.

25. Other instances of poor patient care and safety, resulting from inadequately trained or insufficient staff personnel, include the following:

- a. Because there was no surgery tech available in the operating room, one of the Defendants had to ask the nurse anesthetist to hold his laparoscopic camera through the sterile drape.
- b. A patient of the practice was not catheterized for five hours, resulting in an over-extended bladder, resulting in prolonged bladder disfunction and delayed recovery.
- c. Multiple patients of the practice complained about obviously inexperienced nurses caring for them.
- d. The Defendant doctors had numerous experiences where they had to deliver babies without scrub techs or sufficient staff assistance, and were forced to perform surgical procedures with students to assist.
- e. A nurse digitally checked a 33-week OB patient with ruptured twins, against accepted OB protocol and potentially increasing risk of infection.

- f. One of the Defendant doctors was not called concerning repetitive fetal deceleration and no maternal resuscitation was performed.
- g. At a precipitous birth, a baby was suppressed, but there was no attempt at resuscitation, because equipment was not ready.
- h. A pregnant patient was sent from triage to radiology while bleeding, without fetal monitoring.
- i. A patient of the practice, at 37 weeks, called the Labor and Delivery room at the hospital, stating that she was bleeding; the patient was told not to come to the hospital because they did not have enough staff to attend to her. The patient called the Defendants' on call physician for help, came to the Defendants' office for assessment (even though the office was closed for patient care), and was taken to the hospital by wheelchair and delivered 20 minutes later.
- j. In a single day, four OB patients called Labor and Delivery to schedule regular antenatal testing. The nurse manager told them not to come because they were not staffed for it. Defendants made arrangements to see the patients in their office, although they were not open that day for patient care.
- k. While one of the Defendants was on call, he had a patient with fetal bradycardia, but there were no experienced nurses available, c-section rooms were not ready and no techs were available. Fortunately, the baby's heart rate came back up.
- l. A patient with an abnormal fetal heart rate was allowed to go unmonitored for 45 minutes during a transfer to labor and delivery; this patient was found

to have severe bradycardia upon restarting the monitor and required an emergency c-section. The baby was hypoxic and required transfer to Richland Memorial for brain cooling. SC OB-GYN doctors requested a formal review of this incident, but never received a response from Hospital Administration.

26. Many of the Defendant doctors attended multiple committee meetings, including those of Surgical Services, the OB Department, Perinatal Morbidity and Mortality, and the Campus Executive Committee and voiced these concerns to administration officials present. Again there was no improvement in patient care, patient safety or patient satisfaction.

27. In summary, patient safety issues of all sorts have been reported to hospital officials by the Defendant doctors, doctors from other practices, nurses and patients; at the time the Defendants moved their practice to Lexington Medical Center, they had observed no improvement in the issues described in the previous paragraphs of this pleading.

28. Patients and nurses have complained to the SC OB-GYN doctors and to nurses that hospital rooms and bathrooms are not kept in clean and sanitary conditions. Patients who have been admitted to PRISMA Health Baptist have declined to be readmitted because of these conditions.

29. In addition to the declining state of the physical facilities at PRISMA Health Baptist, the facilities leased by SC OB-GYN deteriorated, as well. Specifically:

- a. The Leased premises were not “Class A” space as required under the Lease.
- b. Through the years, the SC OB-GYN office suite suffered from sewage leaks through the ceiling tiles, causing the practice to be shut down in the impacted areas. On at least one occasion, a sewage leak burst into the

examining rooms and patients had to be escorted from the rooms with sheets as cover-ups.

- c. Palmetto Health employees were allowed to park in spaces which left little to no parking for SC OB-GYN patients.
- d. PRISMA Health Baptist removed all physician assigned parking without notification to the physician.
- e. The elevator outside of the SC OB-GYN front office door was inoperable for a week, and the area outside the suite was turned into a construction site.
- f. The ceiling tiles were regularly and permanently stained due to issues with the HVAC system.
- g. On one particular day, the practice's main waiting room was flooded when the physicians arrived at the office at 7:00 a.m. The mess was being cleaned up while patients were checking in.
- h. On another occasion, the patient restroom flooded after hours while the practice had twenty patients and their spouses there for birthing class presentations.
- i. The HVAC system is improperly regulated, with some rooms in the office suite being intolerably cold, while others are extremely hot.
- j. Patients have become accidentally locked in exam rooms, requiring hospital maintenance personnel to take the door handle off in order to get the patients out.

30. Based upon their patients' complaints, and their own observations, the SC OB-GYN doctors concluded that their patients were not safe in Baptist Hospital and frequently urged patients not to stay overnight unless accompanied by a family member.

31. Following Palmetto Health's merger with the Greenville Hospital System, forming PRISMA Health, the conditions at the Baptist Hospital, known as PRISMA Health Baptist, became worse, with patient care deteriorating even more.

32. Over the three years following the execution of the Leases, Dr. Salley was a member of the "Campus Executive Committee," ostensibly formed for the betterment of Palmetto Health. On multiple occasions, Dr. Salley sounded the alarm about the decline in patient care and other matters, without any significant improvement being made.

33. SC OB-GYN doctors have, on multiple occasions, complained of and submitted formal and informal appeals to the Hospital's administrators and executives regarding their concerns about patient care and the deterioration of the facilities. Dr. Salley with another physician met with John Singerling, president of Palmetto Health-Baptist, and a board member to discuss these concerns, but no improvements were made. Other doctors, nurses, staff and patients have also complained about the inadequate staffing and cleanliness of the hospital. However, no appreciable changes have been implemented.

34. In recent years, the members of SC OB-GYN have, in horror, observed Baptist Hospital recede into a third-tier facility plagued by astonishing lapses in patient care, cleanliness, and unsafe hospital conditions, conditions caused, on information and belief, by PRISMA Health's drive to cut costs, increase profits and pay senior executives exorbitant compensation.

35. Some of the Defendants' patients have requested transfer to another facility because of the poor patient care and the uncleanliness of PRISMA Health Baptist, SC OB-GYN and its doctors have seen a steady decline in the number of surgeries they perform.

36. Non-competitive salaries and the stress of being under-staffed and over-worked have caused a further exodus of Baptist Hospital's veteran nurses, many of whom held positions there for over forty (40) years. Once a bastion of exceptionally skilled and capable nurses, PRISMA Health Baptist now struggles to retain staff longer than a few months. New nurses are thrust alone into patient care without adequate training, jeopardizing patient safety. New staff members are poorly trained or inexperienced, exhibit significant deficits in their ability to properly care for patients, refuse to obey doctors' orders, and are further limited to such numbers as to create notably dangerous conditions for admitted patients.

37. While the terms of the Lease implicitly require the Plaintiff to provide a full-service hospital, for much of 2019, it had no qualified, experienced neurologists or urologists to assist the SC OB-GYN doctors.

38. PRISMA Health's administrative dysfunctions have led to a deterioration in the quality of care for the patients of the SC OB-GYN doctors who entrust their lives and the lives of their newborns to the Hospital's staff and administration.

39. During the period following the execution of the Leases, PRISMA Health Baptist Hospital has received extremely poor ratings for patient safety by independent evaluation authorities, in stark contrast to the superior ratings previously earned by Baptist Hospital. During this period, PRISMA Health Baptist was rated "D" twice in the Hospital Safety Scores published by The Leapfrog Group and only rated a "C" for the first three quarters prior to SC OB-GYN's departure. Since the Defendant doctors' departure, the Hospital received another "C" rating,

reflecting that the Plaintiff has failed and refused to address the issues raised by the Defendants and others about patient safety.

40. Despite SC OB-GYN doctors continuously imploring Plaintiff's executives to address their concerns for patient safety, no appreciable changes have taken place in the years following the renewal of the SC OB-GYN's tenancy at Baptist Hospital. In fact, the conditions complained of herein have only worsened and patient safety at PRIMSA Health-Baptist remains abysmal and apparently secondary to other concerns such as, on information and belief, profit and executive compensation.

41. Ultimately, the SC OB-GYN doctors concluded that PRIMSA Health-Baptist was not safe for its patients to deliver their babies or receive out-patient and in-patient care. In short, practicing medicine at PRIMSA Health- Baptist was dangerous.

42. As a direct result of the failure of PRIMSA Health-Midlands to provide a reasonably adequate hospital facility, the SC OB-GYN doctors were left with no choice but to relocate their medical practice to a location that could support their practice. These doctors felt to do otherwise would be a failure to uphold their moral, ethical, and legal duties owed to patients who entrust their health and well-being, and the health and well-being of their babies, to them.

43. Because they did not believe that their patients could receive safe care at PRIMSA Health Baptist, the SC OB-GYN doctors moved their practice to be near the only local hospital that could provide that care – Lexington Medical Center.

44. Refusing to compromise their integrity and good reputation, the SC OB-GYN doctors moved to Lexington Medical Center with the expectation that they will actually make less financially and that they would lose the autonomy of their practice they have enjoyed for fifty years.

45. Prior to taking this extraordinary step, SC OB-GYN and its doctors notified PRISMA Health of their decision to leave the facility, and why they had made that decision, and asked to be let out of the Leases, and even provided a replacement tenant on the same terms. In response, PRISMA Health sued them.

FOR A FIRST DEFENSE

46. Each and every allegation in the Complaint which is not hereinafter specifically admitted, explained or qualified is denied.

47. The allegations of paragraphs 1-9 are admitted.

48. The allegations of paragraph 10 require no response.

49. The allegations of paragraph 11 are admitted.

50. The allegations in paragraphs 12 and 13 are admitted.

51. The allegations of paragraphs 14-17 are admitted but Defendants crave reference to the terms set forth in the Leases.

52. The allegations of paragraph 18 of the Complaint are admitted to the extent it is alleged Defendant SC-OBGYN occupied the premises as Tenant until approximately September 30, 2019 but would show that it was constructively evicted by the Plaintiff as a result of Plaintiff's failure to maintain and adequately staff its hospital and maintain the leased premises, as is more particularly set forth herein.

53. The allegations of paragraph 19 of the Complaint are denied.

54. Defendants admit that the lawyers who signed the Complaint are counsel of record in this case.

55. Defendants admit the allegations of paragraph 21 only to the extent that the Defendants have failed and refused to pay rent for the demised premises because the Plaintiff has

breached the Lease and rendered Defendants' occupancy unfit for its intended purposes, as more fully set forth herein.

56. The allegations of paragraph 22 of the Complaint are denied.

57. The allegations in paragraphs 23 and 24 of the Complaint are denied.

58. The allegations of paragraph 25 of the Complaint require no response.

59. The allegations in paragraphs 26-28 of the Complaint are admitted only to the extent that the listed Defendants signed Guarantees but crave reference to the documents, but would show that the Plaintiff breached the Leases as set forth herein and further that they were fraudulently induced to execute the Guarantees, all as set forth herein, and deny there is any amount due to Plaintiff.

60. With respect to the allegations of Paragraph 29 of the Complaint, Defendants admit that the lawyers who signed the Complaint are counsel of record in this case.

61. The allegations of paragraphs 30-32 are denied.

FOR A SECOND DEFENSE
BY WAY OF FIRST COUNTERCLAIM
(Breach of Contract/Constructive Eviction)

62. The foregoing allegations are incorporated herein as if repeated verbatim.

63. Section 6.01 of the Leases entered into between PRISMA Health and SC OB-GYN obligates the Landlord at all times relevant hereto to "operate and maintain the Building in accordance with a standard similar to that customarily followed in the operation and maintenance of Class A multi-tenant medical office buildings in the Columbia, South Carolina Area" and to provide certain services delineated in the Leases with greater specificity, including but not limited to "two automatically operated passenger elevators."

64. Section 7.01 of the Leases obligates PRISMA Health to make available to SC OB-GYN unreserved parking spaces for its employees and patients, and reserved parking spaces for its physicians in designated physician parking area(s), to be located in the parking areas specified for in the Building, as further described and delineated in the Leases.

65. Section 8.01 of the Leases contemplates that Landlord would provide an adjacent hospital facility suitable for Defendants' medical practice and clinical needs, which requires the highest quality patient care and safety.

66. Section 8.01 also provides that:

It is expressly understood and agreed that, in the event that (a) Tenant affiliates with, by consolidation or merger or otherwise, a competitor of the Landlord (including, but not limited to another hospital or a hospital-managed company) or (b) a physician or shareholder of Tenant becomes employed by or otherwise affiliated with a competitor of the Landlord (including, but not limited to, another hospital or a hospital-managed company) then this lease shall immediately terminate and shall be of no force or effect, in the sole discretion of Landlord.

67. Section 26.14 provides, in full:

Consent and Approval. Whenever this Lease provides that Landlord's or Tenant's consent or approval is required by the other party, in no event shall consent or approval be unreasonably withheld or delayed.

68. Section 10.01 of the Leases entered into between Landlord and Tenant further obligates Landlord to "keep and maintain in good repair and working order and make all repairs to and perform necessary maintenance upon the Building, and all parts and appurtenances thereof."

69. Section 20.01 of the Lease and South Carolina law requires that Landlord covenants the Tenants quiet enjoyment of the premises.

70. Defendants, through the acts of their agents, servants, and employees, breached the Leases in one or more of the following:

- a. Failing to provide a properly staffed, safe and a suitable full-service hospital facility adjacent to the Leased Premises, as contemplated by the Leases and the assurances of senior management of PRISMA Health – Midlands.
- b. Refusing to allow the termination of the Leases in accordance with Section 8.01.
- c. Failing to remediate persistent sewage leaks through the ceiling tiles, causing SC OB-GYN to shut down the impacted areas;
- d. Failing to remediate persistent HVAC system leaks;
- e. Failing to properly maintain or update plumbing in the premises, causing one patient restroom to flood while 20 patients and their spouses were present for a birthing class presentation, and also causing the main waiting room to flood while patients were checking in;
- f. Failing to maintain the elevators in good order and repair;
- g. Failing to maintain or ensure proper operation of the HVAC systems;
- h. Failing to maintain or properly repair the locking mechanisms in the exam rooms, causing patients to frequently lock themselves in, which would necessitate maintenance to come take the door handle off to get them out.
- i. Failing to ensure the adequate and continued availability of unreserved parking spaces for Tenant’s employees and patients, and designated physician parking area(s).

71. By its actions, the Plaintiff has constructively evicted SC-OBGYN from its tenancy.

72. PRISMA Health has also failed and refused to allow the termination of the Leases and the reletting of the premises to another suitable tenant.

73. But for the assurances of PRISMA Health's executives that Defendants' concerns about patient safety would be adequately addressed, the Defendants would not have signed the Leases and Guarantees.

74. PRISMA Health's actions in this matter have been in retaliation for the SC OB-GYN doctors' new affiliation with Lexington Medical Center, and in bad faith and, thus, were a breach of the covenant of good faith and fair dealing inherent in all contracts.

75. Based on the foregoing, Plaintiff breached its covenants of Quiet Enjoyment and Non-Disturbance found in Section 20.01 of the Leases.

76. The Plaintiff was to provide "Class A" space under the Leases. The Leased Premises are not "Class A" space, as contracted by the Defendants. As a result, Defendants have been damaged because they did not receive the benefit of their bargain and are entitled to judgment in amount equal to the difference between the quality of space contracted for and that which Defendants received.

77. As a result of Plaintiff's breaches described herein, Defendants were forced to relocate their practice and have incurred damages, including but not limited to, purchasing tail-end errors and omissions coverage in excess of \$700,000.00 and other expenses of relocation. Defendants are entitled to judgment against Landlord in an amount to be determined at the trial of this matter resulting from the breaches described herein. To the extent the Defendants are found to be owing anything to the Plaintiff, they request their judgment offset such amount, if any, that may become payable to Plaintiff under this action.

FOR A THIRD AFFIRMATIVE DEFENSE
BY WAY OF SECOND COUNTERCLAIM
(Breach of Contract Accompanied by Fraudulent Act)

78. Each of the foregoing paragraphs are incorporated herein verbatim.

79. PRISMA Health – Midlands has failed to provide a safe and adequately staffed and maintained hospital as required under the Leases at issue in this case.

80. The senior executives of Baptist Hospital/PRISMA Health-Midlands specifically represented and warranted to the Defendants that, should their concerns about patient safety and the facilities at the Baptist Hospital not be properly addressed to their satisfaction, they could leave the facility and terminate the lease without penalty.

81. In fact, section 8.01 of the Lease contemplates the possibility that the Defendants might affiliate with a competitor, in which case “this Lease shall immediately terminate and shall be of no force or effect, in the sole discretion of the Landlord.” Section 26.14 of the Lease provides that “in no event shall consent or approval [of the Landlord] be unreasonably withheld or delayed.”

82. Upon concluding that PRISMA Health – Midlands would never address their concerns about patient safety, there was only one alternative in the area – Lexington Medical Center.

83. SC OB-GYN and its doctors asked to be relieved of their obligations under the Lease so that they could become affiliated with Lexington Medical Center, a competitor of PRISMA Health – Midlands.

84. SC OB-GYN and its doctors actually provided a substitute tenant willing to pay the same rent as provided under the Leases.

85. In a punitive attempt to harm SC OB-GYN and its doctors, Prisma Health - Midlands refused to consent to their termination of the Lease, pursuant to section 8.01.

86. PRISMA Health – Midlands’ refusal to provide its consent or approval was unreasonably withheld, in violation of section 26.14 of the Leases.

87. PRISMA Health – Midlands’ actions were characterized by dishonesty in fact, unfair dealing, bad faith and an attempt at the unlawful appropriation of the Defendants’ property by design, and these actions were in retaliation for Defendants becoming affiliated with Lexington Medical Center.

88. PRISMA Health – Midlands’ actions were separate and distinct from the numerous breaches of the lease by PRISMA Health – Midlands as more fully set forth herein.

89. The Defendants are entitled to an award of their actual damages, and for punitive damages, all in an amount to be determined by a jury as a result of the breach of contract accompanied by fraudulent act by PRISMA Health – Midlands.

FOR AN FOURTH AFFIRMATIVE DEFENSE
BY WAY OF THIRD COUNTERCLAIM
(Promissory Estoppel)

90. Each of the foregoing paragraphs are incorporated herein verbatim.

91. The promissory statements, assurances, and representations indicating the Defendants could vacate the Premises if Defendants’ concerns regarding the Hospital’s administrative shortcomings remained uncorrected were unambiguous in their terms and exhibited sufficient commitment to induce reasonable reliance upon the same.

92. Defendants’ reliance upon the statements and assurances was expected and foreseeable by Landlord, its agents or assignees.

93. Defendants reliance upon the promissory statements, assurances, and representations was objectively reasonable and the Defendants had a right to rely upon the same.

94. The representations made to Defendants constitute a separate enforceable promise and not a variance or modification of the terms of the Leases.

95. Defendants are entitled to judgment against Landlord in an amount to be determined at the trial of this matter resulting from the breach described herein and request such judgment offset the amount, if any, that may become payable to Landlord under this action.

FOR A FIFTH AFFIRMATIVE DEFENSE
BY WAY OF FOURTH COUNTERCLAIM
(Declaratory Judgment)

96. The foregoing allegations are incorporated herein as if repeated verbatim.

97. Baptist Hospital and the Premises leased by the Defendants are an interconnected, self-contained series of buildings that provide physician access to a full-service hospital.

98. Defendants medical practice naturally requires frequent admissions to a hospital with parallel well visits in a physician-office setting.

99. The fact that Baptist Hospital is a full-service hospital induced Defendants to sign the Leases and all parties contemplated, benefited from, and expected the SC OB-GYN doctors to utilize the Hospital.

100. The Leases' provisions include not only what is expressly stated but also what is necessarily implied from the language used therein, the external facts such as the surrounding circumstances, and the parties' relationship or course of dealing.

101. Section 8.01 of the Leases provides that “[t]he Premises shall be used and occupied by the Tenant or its assigns and subtenants *solely* for the purpose of office facilities for practicing physicians on the staff in good standing at a Palmetto Health hospital who adhere to the standards of medical ethics of the Hospital.” (emphasis added).

102. The terms of Section 8.01 further seek to limit the Tenant's ability to associate or merge with any competitors of Landlord.

103. Moreover, Section 8.01 provides that in the event Tenant should sublet the premises, such a subtenant or assignee must be "a practicing physician on the staff in good standing at the Hospital who agree[s] to adhere to the standards of medical ethics of the Hospital."

104. The aforementioned provisions of the Leases contemplate and require that any Tenant, assignee, or subtenant physicians occupying the subject premises utilize the services, facilities, and staff of Palmetto Health Baptist Hospital (now known as Prisma Health Baptist Hospital, the "Hospital") and that these services shall be provided in a manner that would facilitate an occupying physician's duty to safely and effectively engage in the practice of medicine. The Hospital's failure to provide these services in such a manner would thereby violate these implied terms of the Leases.

105. Because Plaintiff contests Defendants' authority to withdraw from the Leases and has failed to admit to violating the implied provisions of the Leases, or that such implied provisions even exist, an actual, justiciable controversy exists subject to S.C. Code Ann. § 15-53-10, *et seq.*

106. Therefore, pursuant to S.C. Code Ann. § 15-53-20, Defendants pray this Court declare that the Leases executed by the parties to this suit contain the above-referenced implied provisions requiring Plaintiff to provide Defendants a hospital that allows Defendants to practice medicine in a safe and effective manner that would not require Defendants to abandon the moral, ethical, and legal responsibilities that physicians owe to the patients under their care.

FOR A SIXTH AFFIRMATIVE DEFENSE
(Failure to Mitigate)

107. Defendants incorporate by reference their responses to the above paragraphs as if fully set forth herein verbatim.

108. Upon information and belief, Plaintiff received two or more inquiries from independent entities or medical groups seeking to lease the premises and Plaintiff indicated that the Premises were not available to lease.

109. Moreover, Lexington Medical Center offered to take over the Leases from Defendant SC-OBGYN and lease the Premises with qualified physician practices, but Plaintiff refused that offer.

110. Lexington Medical Center even tendered a check payable to Plaintiff, but Plaintiff refused to accept Lexington Medical Center as a tenant.

111. Therefore, Plaintiff has failed to mitigate its damages, if any.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

112. Defendants incorporate by reference their responses to the above paragraphs as if fully set forth herein verbatim.

113. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Consent, Estoppel, Waiver, and Acquiescence)

114. Defendants incorporate by reference their responses to the above paragraphs as if fully set forth herein verbatim.

115. Plaintiff's claims are barred, in whole or in part, by the doctrines of consent, estoppel, waiver, and acquiescence.

WHEREFORE, the Defendants respectfully request that the Court enter judgment dismissing the Complaint with prejudice, and award Defendant the following relief:

A. Actual and consequential damages;

- B. Punitive damages as a result of Plaintiff's fraudulent inducement and breach of contract accompanied by fraudulent act;
- C. Attorneys' fees and costs;
- D. Pre-judgment and post-judgment interest; and
- E. For such other and further relief as the Court might deem just and proper.

s/Richard C. Detwiler

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ATTORNEYS FOR DEFENDANTS

Columbia, South Carolina

August 14, 2020

JURY TRIAL DEMANDED