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

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

Plaintiff,

v.

RENOWN HEALTH,

Defendant.

Case No.: 3:12-cv-409

COMPLAINT

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

I. INTRODUCTION

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

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

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

II. JURISDICTION, VENUE, AND COMMERCE

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

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

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

III. THE PARTIES

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

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

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

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

IV. THE ACQUISITIONS

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

Spring, a Nevada professional corporation doing business as Sierra Nevada

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

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

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

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

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

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

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

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

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

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

V. THE RELEVANT MARKET

A. Relevant Service Market

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

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

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

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

These rates are not subject to negotiation.

22. In contrast, commercial health insurers negotiate rates with health care providers and sell health insurance policies to their customers, such as employers and employees, who pay premiums for the policies. Generally, the rates that commercial health insurers pay health care providers are substantially higher than those paid by government payers (Medicare, Medicaid, and TRICARE).

23. There are no reasonable substitutes or alternatives to cardiology services sold to commercial health insurers. A cardiology services provider's negotiations with commercial health insurers are separate from the process used to determine the rates paid by government payers, and a cardiology services provider could, therefore, target a price increase to just commercial health insurers. Commercial health insurers cannot shift to government rates in response to an increase in rates for cardiology services sold to commercial health insurers, and cardiology patients who are ineligible for Medicare, Medicaid, or TRICARE cannot substitute those programs for commercial health insurance in response to a price increase for commercial health insurance. Hence, a hypothetical monopolist provider of cardiology services sold to commercial health insurers could profitably raise prices for those services by a small but significant amount.

B. Relevant Geographic Market

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

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

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

VI. MARKET STRUCTURE AND CONCENTRATION

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

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

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

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

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

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

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

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

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

35. Under relevant case law and the United States Department of Justice and Federal Trade Commission Merger Guidelines ("Merger Guidelines"), the RHP acquisition by

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

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

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

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

VII. ANTICOMPETITIVE EFFECTS

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

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

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

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

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

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

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

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

B. The Acquisition Would Make Anticompetitive Coordination Substantially More Likely

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

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

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

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

VIII. ENTRY CONDITIONS

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

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

IX. EFFICIENCIES

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

X. FIRST CAUSE OF CAUTION

Violation of Clayton Act

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

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

XI. SECOND CAUSE OF CAUTION

Violation of Nevada Unfair Trade Practice Act

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

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

XII. PRAYER FOR RELIEF

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

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

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

Dated: August 6, 2012

Respectfully submitted,

PLAINTIFF STATE OF NEVADA

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

/s/ Brian Armstrong

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

CERTIFICATE OF SERVICE

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

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

/s/ Brian Armstrong

By:

BRIAN ARMSTRONG
Senior Deputy Attorney General
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