

RETURN DATE: MAY 28, 2024

YALE NEW HAVEN HEALTH SERVICES CORPORATION

SUPERIOR COURT

v.

PROSPECT MEDICAL HOLDINGS, INC., PROSPECT CT, INC., PROSPECT ECHN, INC. D/B/A EASTERN CONNECTICUT HEALTH NETWORK, PROSPECT ROCKVILLE HOSPITAL, INC. D/B/A THE ROCKVILLE GENERAL HOSPITAL, PROSPECT MANCHESTER HOSPITAL, INC. D/B/A THE MANCHESTER MEMORIAL HOSPITAL, PROSPECT WATERBURY, INC. D/B/A THE WATERBURY HOSPITAL, PROSPECT CT MEDICAL FOUNDATION, INC. D/B/A EASTERN CT MEDICAL PROFESSIONALS AND ALLIANCE MEDICAL GROUP, PROSPECT ECHN HOME HEALTH, INC. D/B/A VISITING NURSE AND HEALTH SERVICES OF CONNECTICUT, CARDIOLOGY ASSOCIATES OF GREATER WATERBURY, LLC, PROSPECT CT MANAGEMENT SERVICES, INC. D/B/A MEDICAL PRACTICE PARTNERS, HEALTHCARE STAFFING ON DEMAND, LLC, PROSPECT WATERBURY AMBULATORY SURGERY, LLC AND PROSPECT WATERBURY HOME HEALTH, INC. D/B/A VNA HEALTH AT HOME,

JUDICIAL DISTRICT OF HARTFORD

AT HARTFORD

MAY 1, 2024

**COMPLAINT**

## INTRODUCTION

1. Plaintiff Yale New Haven Health Services Corporation (“Yale New Haven Health”), by and through its undersigned counsel, hereby files this Complaint against Defendants Prospect Medical Holdings, Inc. (“Prospect”), Prospect CT, Inc., Prospect ECHN, Inc. d/b/a Eastern Connecticut Health Network, Prospect Rockville Hospital, Inc. d/b/a The Rockville General Hospital, Prospect Manchester Hospital, Inc. d/b/a The Manchester Memorial Hospital, Prospect Waterbury, Inc. d/b/a The Waterbury Hospital, Prospect CT Medical Foundation, Inc. d/b/a Eastern CT Medical Professionals and Alliance Medical Group, Prospect ECHN Home Health, Inc. d/b/a Visiting Nurse and Health Services of Connecticut, Cardiology Associates of Greater Waterbury, LLC, Prospect CT Management Services, Inc. d/b/a Medical Practice Partners, Healthcare Staffing On Demand, LLC, Prospect Waterbury Ambulatory Surgery, LLC and Prospect Waterbury Home Health, Inc. d/b/a VNA Health at Home (each, a “Selling Entity” and, collectively, the “Selling Entities”) upon knowledge as to matters relating to itself and upon information and belief as to all other matters, and alleges as follows.

2. Yale New Haven Health is a leading not-for-profit healthcare system in Connecticut that provides comprehensive, integrated and family-focused care in more than 100 medical specialties. It consists of five hospitals—Yale New Haven, Bridgeport, Greenwich, Lawrence + Memorial and Westerly (in Rhode Island)—and Northeast Medical Group, a physician foundation of primary care and medical specialists. It is also affiliated with Yale University and its highly-ranked Yale School of Medicine.

3. In 2021, Prospect decided to sell most of its Connecticut assets. Toward the end of 2021, Yale New Haven Health began speaking with Prospect about the possibility of buying Prospect’s three Connecticut-based hospitals—Waterbury Hospital, Manchester

Memorial Hospital and Rockville General Hospital (the “Prospect Hospitals”)—and their related medical facilities.

4. Prospect is a private, for-profit company. Prospect and the Selling Entities purchased the Prospect Hospitals in October 2016, converting them from not-for-profit to for-profit entities. In August 2019, Medical Properties Trust, Inc. (“MPT”), a publicly traded real estate investment firm, bought the land and hospital buildings and leased them back to Prospect and the Selling Entities.

5. Yale New Haven Health’s acquisition of the Prospect Hospitals would allow the Prospect Hospitals to return to not-for-profit status and would provide for the real estate and buildings to once again belong to the Prospect Hospitals, providing them with greater financial stability. Through the acquisition, Yale New Haven Health sought to provide local access to the high-quality medical care Yale New Haven Health is known for, while at the same time preserving jobs in the local communities, supporting employee pensions and addressing the future capital needs of the hospital facilities.

6. On February 4, 2022, the parties signed a letter of intent for Yale New Haven Health to acquire substantially all of the assets of the Prospect Hospitals and affiliated entities (the “Contemplated Transaction”). After months of continued negotiations and diligence, on October 5, 2022, Yale New Haven Health and Prospect and the Selling Entities entered into the Asset Purchase Agreement (“APA”), pursuant to which Yale New Haven Health agreed to acquire the Prospect Hospitals and related assets (the “Businesses”).

7. To ensure that Yale New Haven Health received the benefit of this bargain, the APA contained numerous covenants, representations and warranties that Prospect and the Selling Entities were required to uphold and satisfy prior to closing. Among those

obligations were to operate the Businesses in the Ordinary Course; protect patient and employee personal data; remain current on all payment obligations, including payment of rent, accounts payable, taxes and payroll; and comply with all applicable rules, laws and regulations governing the operation of the Businesses. (*See, e.g.*, APA §§ 3.19(a), 3.20(b), 5.3.) Among other closing conditions, there must also be no Material Adverse Change (“MAC”) resulting in a material adverse effect on the financial condition, business or results of operations of the Businesses. (APA § 6.4.)

8. Despite these terms, over the last eighteen months since the APA was signed, Prospect and the Selling Entities have subjected the Businesses to a pattern of irresponsible financial practices, severe neglect and general mismanagement. As a result, the Prospect Hospitals’ administrators have admitted that they “are going through a very significant financial challenge” and that their situation is “dire”.

9. This dire financial condition has been exacerbated by Prospect and the Selling Entities’ failure to abide by applicable regulations and laws. State and federal regulators have identified an inordinate number of serious regulatory violations, straining the Businesses’ relationships with federal and state Governmental Authorities and threatening the Medicare contract of at least one of the hospitals.

10. Prospect and the Selling Entities have not complied with their obligations to providers, failing to pay their physician groups, medical staff and vendors and, in turn, damaging irretrievably their relationships with the very individuals and entities that allow the Businesses to provide medical care to their patients.

11. Prospect and the Selling Entities have failed to ensure that their information technology systems have even the most basic protections against data breaches, and

in fact, a damaging ransomware matter and system compromise occurred in August 2023, resulting in the compromise of protected health information and personally identifiable information of thousands of patients and employees.

12. Prospect and the Selling Entities have also failed to maintain the physical facilities occupied by the Prospect Hospitals, resulting in unacceptable conditions such as rusty equipment in the operating room (*infra* ¶ 60) and inoperable elevators requiring staff to carry patients up and down stairs (*infra* ¶¶ 117, 124).

13. After Prospect and the Selling Entities signed the APA, they failed to invest further in the Businesses. Their lack of financial support has run the Prospect Hospitals into the ground, to the point that the Businesses are no longer operating as a going concern. Since the signing of the APA, the combined EBITDAR (earnings before interest, taxes, depreciation, amortization and rent costs) of the Businesses has plummeted as compared to the financial statements based on which the APA was signed, and has persistently remained at significantly [REDACTED] levels.

14. For these reasons, and as detailed below, Prospect and the Selling Entities have breached the APA and cannot satisfy the closing conditions under the APA.

15. Yale New Haven Health has repeatedly warned Defendants that they were in breach of the APA, and on March 27, 2024, sent Prospect a letter identifying each of the breaches of which Yale New Haven Health was aware on that date.

16. Rather than attempt any steps to rectify the breaches and satisfy the closing conditions, Defendants' only response has been to seek to delay the outside closing date under the APA. It is now clear that Prospect and the Selling Entities have not satisfied—and cannot satisfy—the APA's closing conditions.

17. Accordingly, Yale New Haven Health seeks a declaratory judgment that the closing conditions have not been—and cannot be—satisfied and that Yale New Haven Health is therefore not obliged under the APA to close the Contemplated Transaction.

## **PARTIES**

### **Yale New Haven Health**

18. Plaintiff Yale New Haven Health Services Corporation is a not-for-profit health care organization organized under the laws of the State of Connecticut, with its principal place of business located in New Haven, Connecticut.

### **Prospect**

19. Defendant Prospect Medical Holdings, Inc. is a private, for-profit health care system organized under the laws of Delaware with its principal place of business in Los Angeles, California.

20. Defendant Prospect CT, Inc. is a Delaware business corporation with its principal place of business in Los Angeles, California.

21. Defendant Prospect ECHN, Inc. d/b/a Eastern Connecticut Health Network is a Connecticut stock corporation with its principal place of business in Manchester, Connecticut.

22. Defendant Prospect Rockville Hospital, Inc. d/b/a The Rockville General Hospital is a Connecticut stock corporation with its principal place of business in Vernon, Connecticut.

23. Defendant Prospect Manchester Hospital, Inc. d/b/a The Manchester Memorial Hospital is a Connecticut stock corporation with its principal place of business in Manchester, Connecticut.

24. Defendant Prospect Waterbury, Inc. d/b/a The Waterbury Hospital is a Connecticut stock corporation with its principal place of business in Waterbury, Connecticut.

25. Defendant Prospect CT Medical Foundation, Inc. d/b/a Eastern CT Medical Professionals and Alliance Medical Group is a Connecticut nonstock corporation with its principal place of business in Vernon, Connecticut.

26. Defendant Prospect ECHN Home Health, Inc. d/b/a Visiting Nurse and Health Services of Connecticut is a Connecticut stock corporation with its principal place of business in Vernon, Connecticut.

27. Defendant Cardiology Associates of Greater Waterbury, LLC is a Connecticut limited liability company with its principal place of business in Waterbury, Connecticut.

28. Defendant Prospect CT Management Services, Inc. d/b/a Medical Practice Partners is a Connecticut stock corporation with its principal place of business in Culver City, California.

29. Defendant Healthcare Staffing On Demand, LLC is a Connecticut limited liability company with its principal place of business in Waterbury, Connecticut.

30. Defendant Prospect Waterbury Ambulatory Surgery, LLC is a Connecticut limited liability company with its principal place of business in Waterbury, Connecticut.

31. Defendant Prospect Waterbury Home Health, Inc. d/b/a VNA Health at Home is a Connecticut stock corporation with its principal place of business in Watertown, Connecticut.

## **JURISDICTION AND VENUE**

32. This Court has subject matter jurisdiction pursuant to Conn. Gen. Stat. § 52-1 and Conn. Gen Stat. § 52-29 and venue pursuant to Conn. Gen. Stat. § 51-345(a)(3)(A). The APA specifies that “the venue of all disputes, claims, and lawsuits arising hereunder shall lie in the state and federal courts located in the State of Connecticut”. (APA § 10.3.) The APA further provides that “[a]ll Actions (in contract or tort) arising out of or relating to this Agreement . . . shall be governed by and construed in accordance with the laws of the State of Connecticut”, and that the parties waive any objections to personal jurisdiction in this Court. (*Id.*)

## **FACTUAL ALLEGATIONS**

### **A. Based on Prospect’s Representations, the Parties Negotiate and Execute the Asset Purchase Agreement.**

33. In late 2021, Yale New Haven Health chose to pursue an acquisition of the Businesses, which included two central Connecticut health systems—(i) the health system associated with Waterbury Hospital and (ii) the Eastern Connecticut Health Network (“ECHN”), which comprises Manchester Memorial Hospital and Rockville General Hospital and affiliated physician practices—and their related assets, including real estate, clinical operations and other medical services. Yale New Haven Health saw this acquisition as a way to offer expanded high-quality healthcare within Connecticut. Most prominently, this acquisition would add three hospitals to Yale New Haven Health’s system: Waterbury Hospital (with 357 licensed beds), Manchester Memorial Hospital (with 249 licensed beds) and Rockville General Hospital (with 102 licensed beds). As “safety net” hospitals, the Prospect Hospitals provided access to medical care to underserved communities, regardless of patients’ insurance status or ability to pay for medical services.



34. Prior to 2022, the Prospect Hospitals had strong relationships with physicians, vendors and suppliers, which had allowed the hospitals to respond effectively to the COVID-19 pandemic and increase the quality of care that these safety net hospitals provided to the underserved communities in which they are located.

35. As ECHN president and CEO Deborah Weymouth touted when the Contemplated Transaction was announced, Prospect had made significant investments in its safety net hospitals “to preserve jobs and respond to the needs of the community throughout the [COVID-19] pandemic while increasing both quality ratings and improvements to the patient experience”.<sup>1</sup> Similarly, in the words of now-former Waterbury Hospital president and CEO Dr. Justin Lundbye, “[a]long with ECHN”, Waterbury Hospital was “proud” of its accomplishments, including “being leaders in Connecticut’s response to the pandemic”.<sup>2</sup>

36. Located in areas not currently served by Yale New Haven Health hospitals, the Businesses and their strong relationships with physician groups would allow Yale New Haven Health to broaden the scope of its high-quality care fueled by academic research and clinical trials—services it provides to communities in other areas across the state and sought to make available to the underserved communities in which the Prospect Hospitals are situated.

37. In a competitive bidding process, Yale New Haven Health and Prospect began discussing a potential sale of the Businesses in late 2021 after signing a Confidentiality Agreement on October 26, 2021.

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<sup>1</sup> *Yale New Haven Health Has Signed an Agreement to Acquire Connecticut Health Systems from Prospect Medical Holdings*, YALE NEW HAVEN HEALTH (Oct. 6, 2022), <https://www.ynhhs.org/news/1-ynhhs-has-signed-an-agreement-to-acquire-ct-health-systems-from-prospect-medical-holdings>.

<sup>2</sup> *Id.*

38. On January 10, 2022, Defendants and Yale New Haven Health signed a Confidentiality and Joint Defense Agreement in furtherance of their negotiations, and on February 4, 2022, the parties signed a letter of intent memorializing Yale New Haven Health’s plan to acquire the Businesses.

39. Over the next eight months, Yale New Haven Health conducted due diligence on the Businesses.

40. That diligence showed that on February 28, 2022—the date the parties agreed is the date as of which the Businesses would be valued (the “Balance Sheet Date”)—Prospect reported that the results of the assets to be acquired showed an adjusted EBITDAR of [REDACTED] for the trailing 12 months.

41. On October 5, 2022, the parties entered into the APA, pursuant to which Yale New Haven Health would acquire the Businesses for \$435 million.

42. The APA provides that the Contemplated Transaction would close upon satisfaction of the closing conditions set forth in Articles VI and VII. (APA § 2.10(a).) The APA also contemplates that closing would occur no later than April 5, 2024. (See APA § 8.1(a)(v).)

43. Article VI of the APA sets forth the conditions that Prospect and the Selling Entities must satisfy before closing. Among those conditions is that there has been no MAC “since the Balance Sheet Date that is continuing”. (APA § 6.4.) The APA defines a MAC as “any fact, circumstance, condition, change, event or occurrence occurring after the Balance Sheet Date, regardless of whether such change, event or occurrence actually occurred before, on or after the Balance Sheet Date . . . that, individually or in the aggregate, has resulted in, or would reasonably be expected to result in, a material adverse effect on the financial condition,

business, or results of operations of the Businesses (including the Facilities) taken as a whole, or the ability of Seller or any Selling Entity to consummate the transactions contemplated by the Transaction Documents”. (APA § 1.1.) The parties agreed that any adverse changes to the Businesses would be judged as of February 28, 2022 (the Balance Sheet Date) rather than the October 5, 2022 date of signing (the “Effective Date”). (APA § 3.22.)

44. The APA also contains specific covenants with which Prospect and the Selling Entities agreed to comply during the period between execution of the APA and closing (the “Interim Period”). (APA § 5.1.) Of particular relevance, the APA required Prospect and the Selling Entities to “conduct the operation of the Businesses in the Ordinary Course”. (APA § 5.3.) “Ordinary Course” is defined in the APA as “the ordinary day-to-day business activity of Seller or such Selling Entity (as applicable) conducted in the usual, regular and ordinary course, consistent with the customary reasonable past practices of Seller or such Selling Entity (as applicable), and in accordance with applicable Laws, taking into effect actions taken in response to COVID-19 or its impacts or effects including, without limitation, any such actions taken in order to comply with Laws”. (APA § 1.1.) This requirement was significant because in valuing the Businesses, Yale New Haven Health had relied on the existing quality of care rendered by the Prospect Hospitals—made possible by the Prospect Hospitals’ relationships with physician groups, medical staff and vendors—and the Ordinary Course Covenant was intended to give Yale New Haven Health comfort that Prospect and the Selling Entities would be responsible stewards of the Businesses during the Interim Period.

45. Among their Ordinary Course obligations, Prospect and the Selling Entities were required to do the following during the Interim Period:

- a. “maintain and cause to be maintained the Facilities and all parts thereof, including the Purchased Assets, in substantially the same operating condition” as at the Effective Date (APA § 5.3(a));
- b. perform their “obligations relating to or affecting the Businesses . . . in all material respects, including paying in the Ordinary Course (and in any event before delinquency) all bills and invoices for labor, services, materials, repair, maintenance or leasing of real property as well as other debts and liabilities in the Ordinary Course” (APA § 5.3(b));
- c. use their “commercially reasonable efforts” to “comply in all material respects with any Laws applicable to the Businesses”, maintain “relationships with Government Reimbursement Programs or any other material Third Party Payors, physicians, suppliers, customers, licensors, licensees, advertisers, distributors and others having business relations with the Businesses in the Ordinary Course” (APA § 5.3(d)); and
- d. “promptly notify Buyer of any result, event, fact, condition, change, development or occurrence known” to Prospect or the Selling Entities “that results in an actual breach” of the Ordinary Course covenants set forth in Section 5.3 (APA § 5.3(e)).

46. The APA also required Prospect and the Selling Entities to make certain representations and warranties that were true as of signing and at closing.

47. **Financial Statements.** Among other provisions, the APA requires that the financial statements Prospect provided to Yale New Haven Health “present fairly in all material respects the financial condition” of the Businesses. (APA § 3.4.) During the Interim Period, Prospect was required to provide its audited financial statements to Yale New Haven Health no later than 120 days after the end of each fiscal year (September 30). (APA § 5.16(b).) As detailed below, Prospect issued its audited financial statements for FY 2022 several months after the deadline imposed by the APA, and even then, [REDACTED] [REDACTED] As of the date of this Complaint—more than 200 days after the end of Prospect’s fiscal year 2023—Prospect still has yet to provide audited financial statements for FY 2023 to Yale New Haven Health, which itself is a breach of the APA.

48. **Regulatory Compliance.** The APA requires that Prospect and the Businesses be in compliance with “all applicable Laws . . . including the Healthcare Laws”. (APA § 3.6(a) and (b).) As detailed further below, Prospect and the Selling Entities have failed to manage the Prospect Hospitals according to governing laws, rules and regulations. As a result, the Businesses have received an extraordinary and unacceptable number of regulatory citations and notices of “Immediate Jeopardy”, and are now the subject of several governmental investigations.

49. **Inventory.** The APA also requires that all inventory be usable and salable “in the Ordinary Course”. (APA § 3.9.) As detailed below, Prospect and the Selling Entities have been unable to maintain adequate supplies and functioning equipment, rendering them incapable of making this representation at closing.

50. **Medicare Conditions of Participation.** The Prospect Hospitals are required at closing to be in compliance with Medicare participation conditions. (APA § 3.16(a).)

As discussed in more detail below, the inordinate number of serious regulatory violations and resulting strain on the Prospect Hospitals' relationships with federal and state Governmental Authorities has resulted in a January 26, 2024, notice from Centers for Medicare & Medicaid Services ("CMS"), posing a current threat to the Medicare contract of at least one of the hospitals.

51. ***Relationships with Payors.*** Related to the representation in Section 3.16 that the Businesses are in compliance with the Medicare conditions of participation, Prospect and the Selling Entities also must represent that as of the Effective Date and at closing, they "maintain commercially reasonable relations with each of their Key Payors" and that "no event has occurred that would reasonably be expected to materially and adversely affect" Prospect's and the Selling Entities' "relations with any Key Payor". (APA § 3.21.) The Key Payors are listed in Schedule 3.21 and include commercial health plans and Medicare managed care insurance payors. Prospect and the Selling Entities' failure to maintain compliance with Medicare conditions of participation threatens the Medicare contract of at least Waterbury Hospital, which, if lost, would materially and adversely affect Prospect and the Selling Entities' relationships with Key Payors.

52. ***Employee Relations.*** At closing, the Businesses must have been for the past two years in compliance with the relevant employment laws and there must be no "pending" or "threatened employee strike, work stoppage, work slowdown, lock-out or labor dispute" with any employees or executives of the Businesses. (APA § 3.14.) As further detailed below, Prospect and the Selling Entities have repeatedly failed to pay physicians and other medical staff, materially compromising their relations with physician groups, medical staff and employees. This has led medical staff to publicly protest at the State Capitol. It has also caused both

physicians and entire provider groups to stop providing services at the Prospect Hospitals and resulted in at least one lawsuit against the Businesses.

53. ***Maintenance of Facilities.*** Prospect and the Selling Entities must represent at closing that the facilities occupied by the Businesses are in compliance with the relevant building codes and other applicable laws (APA § 3.12(c)) and that no Selling Entity has suffered “any material taking, damage, destruction or loss with respect to or affecting the Facilities” (APA § 3.22(h)). During the Interim Period, Prospect and the Selling Entities were also required to maintain the facilities “in substantially the same operating condition” as they were in at the time the APA was executed. (APA § 5.3(a).) In breach of this covenant, Prospect and the Selling Entities have failed to maintain the safe condition of their facilities.

54. ***Privacy Laws.*** To close, Prospect and the Selling Entities must be in compliance with the relevant privacy and security laws. (APA § 3.19(a).) As further discussed below, a ransomware matter and system compromise occurred in August 2023 that resulted in the taking of information of thousands of patients and employees, evidencing that Prospect and the Selling Entities failed to implement and maintain adequate technical, administrative and operational cybersecurity and privacy programs with appropriate controls, oversight, testing, personnel and investment. Prospect and the Selling Entities [REDACTED], and cannot reasonably represent that they are in compliance with HIPAA and other applicable privacy laws requiring them to safeguard patient and employee protected health and personally identifiable information.

55. ***Tax Liabilities.*** Prospect and the Selling Entities represented that they had no material tax liability as of the Effective Date, and will need to represent the same at closing. (APA § 3.20(b).) As detailed below, Prospect and the Selling Entities are in gross default of

their tax liabilities, and have failed to identify an adequate plan to come current on certain tax liabilities prior to closing.

56. Underlying Prospect's failure to operate the Businesses in the Ordinary Course and failure to take the steps needed to ensure that its representations and warranties are true at closing is Prospect's utter failure to invest capital in the Businesses. A few years prior to the signing of the APA, in August 2019, Prospect entered into a sale-leaseback deal with MPT—a publicly traded real estate investment trust. In that deal, Prospect sold the real estate occupied by the Businesses to MPT and received in return approximately \$457 million and was extended a loan by MPT. This provided Prospect with cash necessary to invest in and operate the Businesses in a reasonable manner in the ordinary course.<sup>3</sup> Yet, as described herein, Prospect chose not to do so. Its failure to fund the Businesses has been so severe that the Businesses have been unable to pay even their rent.

#### **B. Prospect Ceases Ordinary Course Operation of the Businesses.**

57. Shortly after the APA was executed, Prospect and the Selling Entities ceased operating the Businesses in the Ordinary Course. Among other things, state and federal regulators have issued notices that the Prospect Hospitals' regulatory violations pose an immediate jeopardy to the health and safety of patients. (*Infra* ¶¶ 58-78.) Federal regulators have threatened at least one of the Prospect Hospitals with termination of its Medicare contract

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<sup>3</sup> *Medical Properties Trust Announces \$1.75 Billion Investment in 24 Hospital Facilities*, BUSINESS WIRE (July 15, 2019), <https://www.businesswire.com/news/home/20190715005775/en/Medical-Properties-Trust-Announces-1.75-Billion-Investment-in-24-Hospital-Facilities>; *News Release: Medical Properties Trust Announces Agreement to Sell Connecticut Hospitals*, MEDICAL PROPERTIES TRUST (Oct. 6, 2022), <https://medicalpropertystrust.gcs-web.com/news-releases/news-release-details/medical-properties-trust-announces-agreement-sell-connecticut>.



due to the hospital's failure to comply with federal regulations. (*Infra* ¶¶ 69.) Defendants have failed to protect health information and personally identifiable information as they have failed to prepare for and remediate adequately a ransomware matter and system compromise. (*Infra* ¶¶ 79-104.) Defendants defaulted on payments to medical staff, physician groups and third-party vendors. (*Infra* ¶¶ 105-120.) As a result, numerous medical providers and vendors have terminated their services with the Businesses, the facilities have not been properly maintained and the quality of care and patient safety at the Prospect Hospitals have suffered. (*Infra* ¶¶ 105-29.) Defendants stopped paying rent. (*Infra* ¶¶ 130-36.) Defendants stopped paying taxes. (*Infra* ¶¶ 137-43.)

1. Prospect Fails to Comply with Governmental Regulations.

58. Prospect and the Selling Entities have failed repeatedly to ensure that the Prospect Hospitals provide medically sound treatment and that they comply with governing regulations regarding facility cleanliness and operability, patient safety and quality of patient care. Since signing the APA, the Businesses have received an extraordinary and unacceptable number of regulatory citations and notices of immediate jeopardy to patient health and safety. As discussed in the paragraphs that follow, the high volume and extraordinary nature of these issues evidence the Prospect Hospitals' deteriorating quality of care and inability to provide adequate medical treatment, including due to the Prospect Hospitals' failure to ensure that their medical staff was properly trained and compliant with hospital policy.

59. On June 16, 2023, the CMS issued a notice of noncompliance to Waterbury Hospital Laboratory ("Waterbury Lab"). That notice indicated that the lab was not in compliance with nine of the conditions required for certification under the Clinical Laboratory Improvement Amendments of 1988 ("CLIA") program and that the deficient practices posed

immense risk to patient health and safety. Indeed, the Connecticut Department of Public Health (“DPH”) surveys in June 2023 uncovered that a patient had died in the emergency department in December 2022 after Waterbury Lab failed to timely and properly process the patient’s bloodwork.<sup>4</sup>

60. On July 25, 2023, DPH issued to Waterbury Hospital a notice of noncompliance identifying 20 violations of Section 19-13-D3 of the Regulations of Connecticut State Agencies (“Section 19-13-D3”). Notably:

- ***Staff failed to sanitize operating room equipment (and operating room had rusty equipment).***
- Staff failed to ensure a plan of care was in place for patients with fall risks, ***resulting in patients falling.***
- Staff failed to properly label medication and ***were unable to identify when certain medications expired.***
- The hospital ***failed to complete criminal background checks on 25 newly hired employees***—all of whom had direct access to patients and/or patient information.
- Staff failed to ensure that pre-drawn medication stored in anesthesia carts were discarded in accordance with the hospital’s policy and practice.
- Staff failed to ensure that physician orders for epidural medication were in place and that epidural medication was administered in accordance with hospital policy and practice.
- Staff failed to properly and timely evaluate patients who had been placed in restraints.
- Staff had ***discharged a patient with bipolar disorder without contacting the patient’s guardian.***

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<sup>4</sup> Yale New Haven Health understands that the CLIA violations were remedied and Waterbury Lab was found to be in compliance with CLIA conditions as of September 14, 2023. That does not detract, however, from the severity of the violations at this site—including violations that were linked to a patient’s death.

61. On September 5, 2023, CMS issued a notice of noncompliance to Waterbury Hospital, which stated that CMS had determined the hospital conditions posed an immediate jeopardy to the health and safety of patients. While the immediate jeopardy was subsequently abated, CMS maintained that substantial noncompliance with Conditions of Participation still existed with respect to the “Quality Assessment and Performance Improvement Program” (in violation of 42 C.F.R. § 482.2), “Laboratory Services” (in violation of 42 C.F.R. § 482.27) and “Emergency Services” (in violation of 42 C.F.R. § 482.55). That noncompliance has yet to be remedied.

62. On September 7, 2023, DPH issued yet another notice of noncompliance to Waterbury Hospital, identifying six additional violations of Section 19-13-D3 that remain unabated, including the Emergency Department’s failure to timely analyze a patient’s troponin level that was followed by the patient’s death.

63. On October 11, 2023, CMS issued a notice of immediate jeopardy to Manchester Memorial Hospital based on the hospital’s failure to investigate a registered nurse’s alleged inappropriate physical interactions with patients. The nurse was allegedly having intimate relations with patients—including in patient rooms—both while they were admitted at the hospital and after discharge. In violation of the hospital’s abuse policy, that nurse was neither removed from patient care areas nor placed on administrative leave, and was permitted to continue working with patients for a period of four months. CMS concluded that this placed patients at serious risk.<sup>5</sup>

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<sup>5</sup> Immediate jeopardy was removed on October 13, 2023, after the hospital placed the nurse in question on administrative leave, and was determined to be implementing a responsive action plan. However, the allegations continue to raise concerns about enforcement of and compliance with the hospital’s abuse policy.

64. An October 31, 2023 notice of noncompliance issued to Manchester Memorial Hospital identified 13 violations of Section 19-13-D3 based on DPH visits made to the hospital concluding on March 15, 2023. Those violations included, among other things:

- Medical staff ***losing a sample of potentially cancerous cells that were collected via surgery.***
- Medical staff ***using the wrong implant during a total knee arthroplasty*** (requiring a second surgery to correct).
- Medical staff's ***failure to ensure that patients with infections received antibiotics.***
- Medical staff's ***failure to administer anticoagulants*** (leading to a patient developing deep vein thrombosis).
- The hospital's ***failure to adequately staff a unit (resulting in a patient with a high fall risk falling and fracturing their skull).***

65. A November 1, 2023 notice of noncompliance issued to Manchester Memorial Hospital identified two additional violations of Section 19-13-D3, including the hospital's ***failure to implement continuous safety precautions to prevent infant abductions from the birthing center***, based on DPH visits to the hospital concluding on August 31, 2023. On information and belief, those violations remain unabated.

66. That same day, CMS also issued a notice to Manchester Memorial Hospital identifying violations of numerous regulations based on allegations that the above-described nurse (*supra* ¶ 63) had intimate relations with patients (including a patient who had been admitted for psychotic symptoms), was sending money to former patients and had inappropriate relations in patient rooms. The hospital conducted a brief investigation but did not place the nurse on administrative leave, as required by hospital policy. While Yale New Haven Health understands on information and belief that DPH subsequently found Manchester Memorial Hospital to be in substantial compliance with the related Medicare Conditions of

Participation, the severe violations involved in this situation demonstrate Defendants' failure to run the hospital in the Ordinary Course.

67. On November 3, 2023, DPH issued a notice of noncompliance to Waterbury Hospital identifying an additional violation of Section 19-13-D3, which, on information and belief, remains unabated: namely, that Waterbury Hospital staff were found to have ***failed to ensure that medications were transcribed according to the hospital's procedure and administered as prescribed.***

68. A January 3, 2024 notice of noncompliance issued to Manchester Memorial Hospital identified a violation of Section 19-13-D3 based on the hospital's ***failure to maintain certain electrical equipment.*** Specifically, on or around August 1, 2023, the HVAC system at Manchester Memorial Hospital failed because Defendants had neglected to ensure that the breakers feeding electrical power to the system were replaced in a timely manner because "the vendor was not on the Prospect Holding approved vend[o]r list".<sup>6</sup> Rather than pay to have the system repaired promptly, Defendants allowed it to remain inoperable for over five months<sup>7</sup>—meaning that patients and staff at Manchester Memorial Hospital had to endure the summer heat without air conditioning. The HVAC failure also led to the inability to maintain acceptable humidity and temperature levels in the operating rooms, which in turn led to the ***cancellation of surgeries and a full diversion of certain Emergency Department services.***<sup>8</sup> On information and belief, this violation has yet to be cured.

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<sup>6</sup> January 3, 2024 DPH Notice of Noncompliance to Manchester Memorial Hospital.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

69. In a January 26, 2024 notice to Waterbury Hospital, CMS reported that it found continued substantial noncompliance with Conditions of Participation related to “Patient Rights” (in violation of 42 CFR § 482.13), “Quality Assessment and Performance Improvement Program” (in violation of 42 CFR § 482.21), “Nursing Service” (in violation of 42 CFR § 482.23) and “Anesthesia Service” (in violation of 42 CFR § 482.52). As a result, Waterbury Hospital no longer met the Conditions of Participation in Medicare and was placed under the jurisdiction of the state survey agency. If Waterbury Hospital fails to achieve compliance, CMS may initiate steps to terminate Waterbury Hospital’s Medicare agreement.

70. On March 11, 2024, DPH issued a notice of noncompliance to Waterbury Hospital identifying 18 additional violations of Section 19-13-D3, including *failures to properly administer and monitor anesthesia*, which in at least one case led to a patient’s loss of consciousness and intubation after receiving an epidural, and *multiple reports of medical staff’s abuse of patients*. The hospital has yet to correct these violations.

71. These repeated and serious violations of state and federal law violate APA Section 5.3’s requirement that the Prospect Hospitals be operated in the Ordinary Course.

72. These regulatory failures also demonstrate that Prospect and the Selling Entities are unable to represent and warrant—as a condition precedent to closing—that they “are and have been in compliance in all material respects with all applicable Laws . . . including the Healthcare Laws” (APA § 3.6(a)) and that they have not “received written notice of”, are not “in material violation of” and are not under any obligations to take remedial action under “any applicable material Law” (APA § 3.6(b)). If the Contemplated Transaction were to close, Yale New Haven Health would be subject to being placed in immediate jeopardy due to the extensive and as-of-yet unremedied regulatory violations at the Prospect Hospitals.

73. Moreover, Defendants’ failures to comply with state and federal law at Waterbury Hospital now jeopardize and may lead to the termination of the hospital’s Medicare agreement, rendering Defendants unable to represent and warrant that they are in material compliance with the terms and conditions of participation in Medicare and are eligible for payment thereunder (APA § 3.16(a)) and that “no event has occurred that would reasonably be expected to materially and adversely affect Seller’s and the Selling Entities’ relations with any Key Payor”, with Key Payors including Medicare managed care providers (APA § 3.21).

74. That Defendants will be unable to resolve the regulatory issues in order to satisfy the closing conditions is further demonstrated by the existence of [REDACTED] unresolved government investigations into Defendants’ operation of the Businesses.

75. On April 19, 2023, the Connecticut Attorney General issued to Prospect a Civil Investigative Demand (“CID”) in connection with Prospect’s hospital funding practices that may constitute unfair or deceptive acts or practices in violation of the provisions of the Connecticut Unfair Trade Practices Act.

76. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

77. [REDACTED]  
[REDACTED]  
[REDACTED]

78. None of these investigations has been resolved, which renders Defendants unable to represent that neither Prospect nor any Selling Entity “is under investigation with

respect to[] any applicable material Law, including the Healthcare Laws” (APA § 3.6(b)) nor that neither Prospect nor any Selling Entity is “the recipient of or served with any . . . civil investigation demand . . . or any other material inquiry related to compliance with Healthcare Laws from any Governmental Authority” (APA § 3.6(e)).

2. Defendants Fail to Prepare for and Remediate Cybersecurity Matter, Further Crippling Prospect Hospitals.

79. In addition to the grievous and numerous regulatory infractions by the Prospect Hospitals, Defendants’ insufficient cybersecurity measures and investment have further contributed to the downturn of the hospitals.

80. In the early morning hours of August 1, 2023, Prospect and the Selling Entities became aware of a ransomware matter and system compromise affecting all three Prospect Hospitals (the “Cybersecurity Matter”).<sup>9</sup> An unauthorized party had gained access to Prospect’s and the Selling Entities’ electronic environments [REDACTED] and accessed and/or acquired files that contained private and sensitive patient and employee information. *Approximately 110,000 patients and employees have had their protected health information and/or personally identifiable information compromised* as a result of the Cybersecurity Matter.<sup>10</sup>

81. The Cybersecurity Matter laid bare deficiencies in Prospect’s and the Selling Entities’ information technology (“IT”) security controls and preparedness for threats

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<sup>9</sup> Dave Altimari & Jenna Carlesso, *CT Hospitals Unsure if Patient Records Were Breached in Cyberattack*, CT MIRROR (Sept. 8, 2023), <https://ctmirror.org/2023/09/08/ct-hospital-cyberattack-manchester-rockville-waterbury/>.

<sup>10</sup> Angela Fortuna, *Cyberattack Impacting ECHN, Waterbury Health Affected Nearly 110,000 People: Officials*, NBC CONNECTICUT (Nov. 15, 2023), <https://www.nbcconnecticut.com/news/local/cyberattack-impacting-echn-waterbury-health-affected-nearly-110000-people-officials/3150290/>.



that the Prospect Hospitals knew or should have known about. Cybersecurity compromises—like the one that impacted the Prospect Hospitals in 2023—have been on the rise in the healthcare industry since the COVID-19 pandemic. Those breaches and the threats they pose to data privacy were the subject of extensive public reporting in the years leading up to the Cybersecurity Matter.<sup>11</sup> Prospect and the Selling Entities ignored these warnings entirely.

82. In the months leading up to the ransomware matter and system compromise, Prospect and the Selling Entities [REDACTED]  
[REDACTED]

83. It is customary for a hospital to conduct routine penetration testing of its systems, in which a cybersecurity expert attempts to find and exploit vulnerabilities in the hospital's system. This testing allows a hospital to identify and remedy vulnerabilities in its IT systems that could lead to the compromise of personally identifiable information or protected health information. Indeed, Yale New Haven Health conducts penetration testing at least twice annually. As Yale New Haven Health learned for the first time during its integration planning following execution of the APA, Prospect and the Selling Entities [REDACTED]  
[REDACTED]

84. Prospect and the Selling Entities also failed to safeguard against a systemwide taking of protected health information or personally identifiable information by [REDACTED]. The Businesses had a [REDACTED]  
[REDACTED]

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<sup>11</sup> See, e.g., Maggie Miller, *The Mounting Death Toll of Hospital Cyberattacks*, POLITICO (Dec. 28, 2022), <https://www.politico.com/news/2022/12/28/cyberattacks-u-s-hospitals-00075638>; Stacy Weiner, *The Growing Threat of Ransomware Attacks on Hospitals*, AAMC (Jul. 20, 2021), <https://www.aamc.org/news/growing-threat-ransomware-attacks-hospitals>.

[REDACTED] leaving the systems even more vulnerable to breach and enabling an unauthorized actor to gain access not just to the information on the systems of the target hospital, but also to the information on the systems of the other Businesses.

85. Prospect and the Selling Entities also had an utter lack of asset management with respect to their IT systems. Prospect and the Selling Entities failed to

[REDACTED] And in conversations with Yale New Haven Health and its advisors following the execution of the APA, Prospect [REDACTED]

[REDACTED]

[REDACTED]—the very platform that allowed the unauthorized actor to gain access to Prospect’s and the and the Selling Entities’ systems in the Cybersecurity Matter—despite having owned the hospital for nearly seven years.

86. Prospect and the Selling Entities also made their systems vulnerable to breach by failing to [REDACTED] Prior to the Cybersecurity Matter, Prospect’s and the Selling Entities’ systems had an [REDACTED]

[REDACTED] that is typical in the healthcare industry.

87. Prospect and the Selling Entities also [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

88. In addition to revealing Prospect’s and the Selling Entities’ failure to adequately safeguard against a compromise of protected health information and personally identifiable information, the Cybersecurity Matter showed Prospect’s and the Selling Entities’

failure to remediate the breach in a way that ensured patients could continue to be served adequately.

89. Prior to the Cybersecurity Matter, Prospect's Chief Information Security Officer ("CISO") resigned. Prospect did not immediately fill that position. In fact, to date, Prospect has failed to hire a new CISO. The resulting lack of leadership of Prospect's information security team exacerbated Prospect's inadequate response to the Cybersecurity Matter.

90. For the first 24 hours following the Cybersecurity Matter, the Prospect Hospitals were on "full diversion", taking no patients.<sup>12</sup>

91. On August 6, 2023, an anonymous grievance regarding Waterbury Hospital alerted state officials that the Cybersecurity Matter was adversely impacting patient safety and quality of care. According to the complaining party, the "Hospital is being run in unsafe conditions after computers being hacked. There is poor communication between health care providers and mistakes are being made that are affecting the welfare and safety of patients. There is insufficient information and history available due to no access to electronic records. Pharmacy is not verifying new medication orders before medications are administered putting patients at further risk."<sup>13</sup>

92. On August 7, 2023, DPH officials observed "issues related to medical administration" and learned that patients at Waterbury Hospital had missed their medication.<sup>14</sup>

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<sup>12</sup> Dave Altimari & Jenna Carlesso, *Inside the Cyberattack at Prospect Medical Holdings' CT Hospitals*, CT MIRROR (Oct. 1, 2023), <https://ctmirror.org/2023/10/01/ct-prospect-medical-holdings-hospitals-cyberattack-yale-sale/>.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

93. As DPH officials would later discover, Manchester Memorial was not equipped to safeguard patients in the aftermath of the Cybersecurity Matter. The infant security system malfunctioned and because medical staff were not adequately monitoring the ward, no proper system was in place to prevent infants from being abducted from the hospital.

94. Even weeks after the Cybersecurity Matter was first detected, conditions at the Prospect Hospitals did not improve. Patient census reports showed that Manchester Memorial lost over 30% of its patients between August 9 and August 20, 2023.<sup>15</sup> Manchester Memorial was so crippled by the Cybersecurity Matter that it could not take patients, and patients were forced to be diverted to hospitals in neighboring states. That diversion lasted until August 28, 2023.<sup>16</sup>

95. Waterbury Hospital's emergency department diverted so many patients to Saint Mary's Hospital that Saint Mary's emergency department became overrun, with patients sitting on the floor and waiting on gurneys in hallways for days before being admitted.<sup>17</sup>

96. During the six weeks following the breach, the Prospect Hospitals were forced to cancel nearly half of their elective procedures and at times could not process X-rays or CT scans that were vital to providing proper treatment to potential stroke or heart attack victims.<sup>18</sup>

97. The Prospect Hospitals were also short-staffed. Prospect asked DPH to provide temporary pharmacists and pharmacy technicians. State officials were so concerned

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

about staffing issues at Waterbury Hospital that they considered activating the volunteer Medical Reserve Corps.<sup>19</sup>

98. The Prospect Hospitals were unable to bill insurance providers and Medicaid for payment, forcing the state Department of Social Services to advance them approximately \$7.5 million.<sup>20</sup>

99. The Prospect Hospitals did not declare “all services back online” until September 12, 2023, nearly six weeks after the breach began.<sup>21</sup>

100. The loss of patient confidence and tarnished reputations of the Prospect Hospitals resulting from the Cybersecurity Matter is extensive. As Waterbury Hospital CEO Dr. Lundbye confirmed, the Prospect Hospitals are faced with “a long-term recovery” from the Cybersecurity Matter.<sup>22</sup>

101. Notwithstanding the catastrophic harm done from the breach, Prospect and the Selling Entities refused to take steps to rebuild the Prospect Hospitals’ IT systems or protect them from further incursions. At a September 26, 2023 meeting with state legislators, the Prospect Hospitals’ IT systems were described as “old” and requiring updating, but Prospect

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Dave Altimari, Jenna Carlesso & Mark Pazniokas, *Hospital Execs to Lamont, Lawmakers: Seal the Yale-Prospect Deal*, CT MIRROR (Sept. 26, 2023), <https://ctmirror.org/2023/09/26/hospital-execs-to-lamont-lawmakers-seal-the-yale-prospect-deal/> [hereinafter *Seal the Yale-Prospect Deal*].

claimed “they don’t have enough resources” to fund upgrades—passing the buck until such a time as Yale New Haven Health could fix them.<sup>23</sup>

102. Prospect is also now [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

103. As a result of Defendants’ failure to adequately prepare for and remediate the compromise of patient and employee protected health information and/or personally identifiable information, Defendants are unable to represent, as required for closing, that during the last 24 months leading up to either the Effective Date or closing date, they have complied with applicable Privacy and Security Laws and have “taken all appropriate and necessary steps to contain, eradicate and remediate each ‘breach’, as defined by HIPAA, of the security of any Purchased Asset.” (APA § 3.19(a).)

104. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Defendants’ Failure to Pay Vendors & Suppliers.

105. Further exacerbating the decline in quality of care, the Prospect Hospitals have violated their obligation to pay vendors and physicians in the Ordinary Course, “and in any

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<sup>23</sup> *Id.*

event before delinquency”, driving many vendors and physicians (including entire physician groups) to stop providing services to the Prospect Hospitals. (APA § 5.3(b).)

106. In a September 13, 2023 email to Yale New Haven Health, the Chair of the Department of Anesthesiology at ECHN and the Managing Partner of Anesthesia Associates of Willimantic (“AAW”)—the sole provider of anesthesia services for ECHN—stated that ECHN was “months behind in payments despite multiple invoice reminders, in-person meetings with the CEO, emails, and . . . corporate attorney involvement.” AAW indicated it would be reducing the services it provides due to lack of payment and that, together with other hospital specialty groups that had also not been paid, planned to detail their concerns to the Connecticut Attorney General.

107. During a September 26, 2023 meeting, executives from Waterbury Hospital and ECHN informed Governor Lamont and legislators that all three of the Prospect Hospitals faced financial ruin if the transaction with Yale New Haven Health were not expedited. Describing the Prospect Hospitals’ financial condition as “dire”, the executives admitted that the Prospect Hospitals were struggling to pay their vendors and contracted physicians, that “there have been limitations on lab equipment and chemicals used in labs” and that they were even “having difficulty paying for bed linens, things like that”.<sup>24</sup>

108. Beginning on or before September 23, 2023, the Waterbury Hospital Neonatal Intensive Care Unit and Well Baby Nursery/Postpartum Unit were unable to provide patients with on-site bilirubin testing due to a lack of laboratory testing supplies. The fact that Waterbury Hospital, which has a dedicated Family Birthing Center and a Level III neonatal

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<sup>24</sup> *Id.*

intensive care unit, was unable to administer such a routine and necessary procedure to newborns/neonates (which is a particularly vulnerable patient population) for a period of time demonstrates a lack of quality patient care and is detrimental to the hospital's reputation.

109. Since at least November 27, 2023, doctors have reported instances of being unable to use required materials due to supply shortages and at times are forced to use lower-quality materials associated with slower healing and increased reports of pain. By way of example, some surgeons have been unable to obtain their preferred surgical mesh.

110. On November 30, 2023, the CT Mirror reported that “[s]urgeries have been postponed because health care providers don’t have the needed resources.”<sup>25</sup> Additionally, surgeons are no longer performing certain spine and vascular surgeries at Waterbury Hospital and are instead taking those surgeries to competing hospitals because vendors will no longer provide certain supplies necessary for such surgeries. Indeed, because the Prospect Hospitals were not paying physicians, “[m]any of them are planning to leave”.<sup>26</sup>

111. In November 2023, it was reported that ECHN owed \$5.9 million to local vendors and \$5.18 million of unpaid compensation to physicians.<sup>27</sup>

112. On November 13, 2023, nurses and physicians from all three Prospect Hospitals rallied at the State Capitol, complaining that, among other things, they were not getting

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<sup>25</sup> Jenna Carlesso & Dave Altimari, *CT Presents Draft Settlement in YNHH-Prospect Hospitals Sale*, CT MIRROR (Nov. 30, 2023), <https://ctmirror.org/2023/11/30/prospect-medical-holdings-ct-hospitals-ynhh-sale/>.

<sup>26</sup> *Seal the Yale-Prospect Deal*, *supra*, n.22.

<sup>27</sup> Jenna Carlesso & Dave Altimari, *The CT Hospitals Face a Situation Called ‘Dire.’ Doctors and Other Joined the Fight to Save Them*, HARTFORD COURANT (Nov. 13, 2023), <https://www.courant.com/2023/11/13/the-ct-hospitals-face-a-situation-called-dire-doctors-and-other-joined-the-fight-to-save-them/>.



paid for their services. During that rally, cardiologist and president of the medical staff at ECHN, Dushynt Gandhi, publicly stated: “Cardiologists, general surgeons, vascular surgeons are making phone calls—they are not getting paid for their services, including myself. And we are not talking about only delayed or delinquent payments. In some situations, [it’s] no payment.” Dr. Gandhi also stated that staff and doctors were considering leaving and that one of his colleagues had said that they “probably will not take calls . . . and the reason is non-payment”. Dr. Gandhi also noted that “[t]here’s a chance that if the money is not paid, some of the nurses and staff who are providing travel services would go away”, resulting in a necessary decrease of the services those staff provide.<sup>28</sup>

113. On December 18, 2023, a Connecticut Superior Court entered an order finding probable cause to conclude that Waterbury Hospital had failed to pay North American Partners in Anesthesia (Connecticut) for anesthesia services, and ordered it to either post a bond in the amount of \$1.9 million or to file an affidavit disclosing its assets within 45 days. *North American Partners in Anesthesia (Connecticut) v. Prospect Waterbury, Inc. D/B/A Waterbury Hospital*, UWY-CV22-6065813-S (Super. Ct. Waterbury).

114. Further, the entire Waterbury Hospital emergency room physician group was changed over in March 2024 because the previous group was deemed too expensive. Additional cuts have also been recommended to multiple services. One of two hospitalist service groups has not been paid and will be leaving, and certain subspecialists in orthopedic and other

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<sup>28</sup> Jenna Carlesso & Dave Altimari, *Medical Staff, CT Legislators Rally for Prospect Hospitals’ Sale to Yale New Haven Health*, CT MIRROR (Nov. 13, 2023), <https://ctmirror.org/2023/11/13/ct-prospect-medical-hospitals-yale-health-sale/>.

surgical specialties are refusing to provide care at Waterbury Hospital due to the hospital's refusal to pay for important services such as call coverage.

115. While this inability to timely pay the people supplying critical services was exacerbated by the Cybersecurity Matter, it had already begun to plague the Prospect Hospitals in the months leading up to the Cybersecurity Matter.

116. Indeed, Waterbury Hospital's then-CEO Dr. Lundbye acknowledged that even prior to the Cybersecurity Matter, the hospital was "stretching out his vendors" and its *accounts payable had grown to over \$40 million*.<sup>29</sup> Fearing bankruptcy, several vendors had put Waterbury Hospital and Manchester Memorial "on credit hold" and were "refusing to do additional business with the hospitals" until they got paid. Dr. Lundbye reported that he had been called by unpaid vendors "who tell him (while crying) that they may have to declare bankruptcy because of [the] nonpayment".<sup>30</sup>

117. Defendants also failed to pay the Waterbury Hospital and Manchester Memorial elevator supplier, Otis, and, thus, have been unable to maintain operable elevators at both hospitals. As a result, staff has been forced to carry patients up and down the stairs, posing a clear and substantial risk to patient (and employee) safety.

118. Dr. Lundbye had promised vendors that they would be repaid after Prospect closed a financing deal it had been working on, yet none of the proceeds from that deal

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<sup>29</sup> Aug. 5, 2023 Email from J. Dach to J. Manisha re Prospect Continued, <https://s3.documentcloud.org/documents/23997185/2023-09-28-15-10.pdf>.

<sup>30</sup> *Id.*

flowed to any of the three Prospect Hospitals.<sup>31</sup> Prospect's financial practices are currently under investigation by the Connecticut Attorney General's office.<sup>32</sup>

119. These failures to pay medical staff, physicians and vendors violate the Ordinary Course covenant to timely pay all liabilities of the Businesses. (APA § 5.3(b).)

120. These failures have also led to the breakdown in the Businesses' relationships with key providers that are essential to the core operations of the Businesses, rendering the required representations in Section 3.14 incapable of being true and accurate. Physician groups have terminated services with the Businesses, and medical staff have rallied in protest and threatened to leave. Vendors are refusing to supply necessary medical supplies. For April 2023, Prospect reported that, in total, Waterbury Hospital and ECHN had [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. *By January 2024, these figures grew to [REDACTED] and [REDACTED], respectively.* Even if these critical providers were paid out of any closing proceeds, such payment could not guarantee that the providers would resume services at the Businesses. To the contrary; the damage that has been done to these relationships is extensive and will require significant time and investment to repair—and may not even be reparable.

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<sup>31</sup> *Id.*

<sup>32</sup> Eric Bedner, *CT AG Probing Prospect Medical Holdings' 'Financial Practices' Amid Sale of ECHN Hospitals to Yale*, CT INSIDER (Nov. 3, 2023), <https://www.ctinsider.com/journalinquirer/article/ct-prospect-medical-attorney-general-investigation-18466708.php>.

4. Defendants' Failure to Maintain Facilities.

121. In addition to Defendants' mismanagement of the Prospect Hospitals' services and operations, physicians, employees and patients have reported unsafe conditions of the facilities themselves, again stemming from Prospect and the Selling Entities' utter failure to invest further in the hospitals they wish to sell.

122. As described above, in early August 2023, the HVAC system at Manchester Memorial Hospital failed because Defendants had neglected to ensure that the breakers feeding electrical power to the system were replaced in a timely manner because "the vendor was not on the Prospect Holding approved vend[o]r list".<sup>33</sup> The hospital was forced to cancel surgical procedures and divert patients to other hospitals due to the operating room temperature and humidity levels that were outside the acceptable range.<sup>34</sup>

123. In November 2023, the Mother/Baby Unit at Manchester Memorial Hospital (which houses delivery and post-partum rooms, the newborn nursery and the neonatal intensive care unit) was without heat for approximately two weeks as a result of [REDACTED]. During this period, [REDACTED], jeopardizing the health and safety of the patients—[REDACTED]—and staff. [REDACTED]

[REDACTED]

[REDACTED]

124. As described above, Prospect has also failed to pay the Waterbury Hospital and Manchester Memorial elevator maintenance provider, resulting in staff being forced

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<sup>33</sup> January 3, 2024 DPH Notice of Noncompliance to Manchester Memorial Hospital.

<sup>34</sup> *Id.*

to carry patients up and down the stairs, posing a clear and substantial risk to patient (and employee) safety and further driving patients away from the hospitals.

125. Additionally, the cameras and lights in the Prospect Hospitals' parking lots have not been functioning consistently, leading to criminal activity and feelings of unease among visitors and staff.

126. Yale Medicine physicians who work at Waterbury Hospital reported that as of October 25, 2023, there had been at least four vehicles stolen from the Waterbury Hospital parking lots.

127. In addition, several people (both staff and visitors) have reported being followed or approached in the parking lots after exiting the hospital in the off hours.

128. These failures to pay for even minimal maintenance of the facilities and to provide basic security threatens to drive away even more patients and physicians and further degrades the Prospect Hospitals' reputations.

129. These failures to maintain the facilities of the Businesses violates the Ordinary Course covenant (APA § 5.3(a)) and also renders untrue any representation by Prospect or the Selling Entities that the facilities have been maintained as required (APA § 3.12).

5. Prospect Defaults on Its Rent.

130. Defendants' failure to timely pay the Businesses' liabilities also extended to their rent payment obligations.

131. On February 23, 2023, MPT stated during its own earnings call that Prospect had not paid the rent that it owed to MPT in connection with the Prospect Hospitals in

January or February 2023.<sup>35</sup> Defendants had not notified Yale New Haven Health of this failure to pay rent, despite their obligation under Section 5.3(e) of the APA to do so, and Yale New Haven Health learned of the unpaid rent for the first time during this earnings call.

132. By May 2023, Prospect owed MPT \$56 million in accrued rent and interest, in addition to nearly \$400 million more in loans that MPT had extended to Prospect.<sup>36</sup>

133. Prospect negotiated a restructuring of its Master Agreement with MPT under which, “in lieu of cash payment for \$573 million of loans, unpaid rent and interest, and other amounts owed”, MPT would receive equity in PHP Holdings, LLC, which controls Prospect.<sup>37</sup> Specifically, Prospect promised to pay MPT \$355 million out of the closing proceeds from the Yale New Haven Health deal and give MPT a \$103 million equity stake in PHP Holdings. In exchange, MPT would reduce Prospect’s rent obligations to \$0.00 per month through October 31, 2023. This arrangement was finalized in May 2023.<sup>38</sup>

134. Prospect induced Yale New Haven Health to consent to this arrangement by representing that the restructuring [REDACTED]

[REDACTED] Prospect also indicated that the restructuring and recapitalization agreement would [REDACTED]

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<sup>35</sup> Medical Properties Trust Q4 2022 Earnings Call (When asked by Michael Carroll from RBC Capital Markets, “Did Prospect pay their full rent in January and February?”, Steven Hamner, MPT CFO, responded, “No”).

<sup>36</sup> Katy Golvala & Jenna Carlesso, *Meet the Hospital Mega-landlord at the Center of the Yale-Prospect Deal*, CT MIRROR (November 16, 2023), <https://ctmirror.org/2023/11/16/prospect-medical-holdings-mpt-properties-trust/>.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*; *Medical Properties Trust Announces Prospect Recapitalization Transactions*, MEDICAL PROPERTIES TRUST (May 23, 2023), <https://medicalpropertiestrust.gcs-web.com/node/15376/pdf>.



Memorial Hospital owed \$22.9 million and Rockville General Hospital owed \$8.1 million, for a total of \$67.39 million.<sup>39</sup>

140. State provider taxes were not the only taxes that Prospect and the Selling Entities had failed to pay. As of August 21, 2023, Prospect and the Selling Entities had paid only [REDACTED] of their [REDACTED] real property tax liabilities, taxes that they are responsible for paying pursuant to the terms of their leases with MPT.

141. In response to the Department of Revenue's attempts to collect on the delinquent taxes, Defendants negotiated a settlement of their provider tax liabilities. That settlement provided that the Selling Entities would be granted a discount [REDACTED]

[REDACTED], with \$55 million paid [REDACTED]

[REDACTED] with proceeds from the closing of the Contemplated Transaction [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

142. Prospect and the Selling Entities [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

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<sup>39</sup> Dav Altimari et al., *Prospect Medical Chain Owes CT \$67 Million, Tax Liens Show*, CT MIRROR (Jan. 9, 2024), <https://ctmirror.org/2024/01/09/prospect-medical-holdings-ct-hospitals-tax-lien/>.



143. These failures to pay tax liabilities render false Defendants’ representation in Section 3.20(b) of the APA that as of both the Effective Date and at closing, “all material Taxes, penalties, interest, and any other statutory additions which have become due pursuant to the Tax Returns, and any material assessments in respect of the Tax Returns of Seller and the Selling Entities have been paid when due”.

**C. The Prospect Hospitals Are No Longer Financially Viable.**

144. Defendants’ grievous mismanagement of the Businesses since the Balance Sheet Date has led to financial degradation that has been overwhelming—even when accounting for any impact of the Cybersecurity Matter that Defendants may claim is merely temporary. As detailed below, the Businesses’ EBITDAR has plummeted, they have [REDACTED]

[REDACTED] and they [REDACTED]  
[REDACTED]

[REDACTED] This financial deterioration, coupled with the gross mismanagement of the Businesses—which will only lead to further financial decline—evinces Defendants’ failure to operate the Businesses in the Ordinary Course and constitutes a MAC under the APA.

145. Even prior to the Cybersecurity Matter, the Businesses’ ability to continue as a going concern was called into question. Prospect’s audited financial statements for FY 2022—due 120 days after its year-end on September 30, 2022—were not provided to Yale New Haven Health until June 2023 (approximately five months late). (See APA § 5.16(b).) Prospect told Yale New Haven Health in March 2023 that [REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Under the APA, Yale New Haven Health in fact agreed to assume very few of the Businesses' liabilities.<sup>40</sup> (See APA § 2.5.)

146. That the Businesses are unlikely to continue as a going concern is further supported by their increasingly bleak financial performance since the Balance Sheet Date.

147. Although the Businesses had a reported adjusted EBITDAR of [REDACTED] [REDACTED] for the trailing 12 months ended the Balance Sheet Date (February 28, 2022), by October 2023—a year after the APA was executed and 20 months after the Balance Sheet Date—that figure [REDACTED]. By December 2023—14 months after the APA was executed and 22 months after the Balance Sheet Date—the Businesses' reported adjusted EBITDAR [REDACTED].

148. Similarly, the Businesses' operating income [REDACTED] [REDACTED] for the trailing 12 months ended the Balance Sheet Date to [REDACTED] [REDACTED] for the trailing 12 months ended October 2023. By December 2023—14 months after the APA was executed and 22 months after the Balance Sheet Date—the operating income [REDACTED] [REDACTED]. That is, the Businesses' operating income [REDACTED] [REDACTED] between the Balance Sheet Date and December 2023.

149. Moreover, while EBITDAR is the principal financial metric on which Prospect and the Selling Entities have reported monthly results to Yale New Haven Health, on

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<sup>40</sup> When Yale New Haven Health asked Prospect to [REDACTED], Prospect refused.

information and belief, other relevant financial metrics would show similar—or worse—deterioration since the Balance Sheet Date.

150. Prospect has also failed to comply with its obligation to produce audited financials for FY 2023 on a timely basis. This tardiness in itself is another breach of Section 5.16(b) of the APA.

151. Importantly, most of the Businesses’ economic decline is not attributable to the Cybersecurity Matter, which indicates that the problems are systemic. Indeed, in documents provided to the Connecticut Office of Health Strategy (“OHS”), Prospect estimates the financial impact of the Cybersecurity Matter, from August through November 2023, to be \$20.85 million. Thus, even if that estimated impact is excluded from EBITDAR, the Businesses’ EBITDAR [REDACTED] on the Balance Sheet Date to [REDACTED] [REDACTED] for the trailing 12 months ended December 2023.

152. Essentially acknowledging that the Businesses are in extreme financial distress, Defendants resorted to [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]— [REDACTED] for which they never sought Yale New Haven Health’s approval, in violation of Sections 5.3 and 5.4 of the APA. Not only are these [REDACTED] a far cry from operating in the Ordinary Course, as required under Section 5.3 of the APA, but Defendants have provided no report or other evidence to Yale New Haven Health [REDACTED] To the

contrary, as the Businesses' financials demonstrate, the Prospect Hospitals [REDACTED]  
[REDACTED].

**D. Prospect's Mismanagement Carries Long-Term Consequences.**

153. Prospect and the Selling Entities have materially compromised their relationships with medical staff, employees, suppliers and patients in a way that is likely to impede the Businesses' ability to provide adequate medical care and sustain volume/operations going forward. Physicians and medical staff are likely to continue to avoid providing services at the Prospect Hospitals given they cannot guarantee they will be paid for their services. Suppliers and vendors are likely to continue to refuse doing business with the Prospect Hospitals since they are also not being paid on time or at all. Patients are likely to continue to look elsewhere for services given the myriad regulatory noncompliance issues such as lack of maintenance of facilities and inappropriate behavior of medical staff, as well as the lack of protection of their personal information and data. This severe level of reputational harm will have long-lasting effects on the Prospect Hospitals and cannot be remediated in a short period of time nor without significant and unanticipated investment from Yale New Haven Health.

154. Since the Cybersecurity Matter, Defendants have been unable to provide Yale New Haven Health with sufficient information to confirm that the Selling Entities' security posture is appropriate on a going forward basis. For example, Defendants would not timely provide standard documentation that Yale New Haven Health requested, such as [REDACTED]

[REDACTED] Nor have Defendants provided any evidence that they have put in place an appropriate plan to better prepare the Prospect Hospitals' IT systems against a future breach. Defendants have provided no evidence that they are [REDACTED]

[REDACTED]

[REDACTED] Upon request for access to IT systems in Yale New Haven Health's Information Request pursuant to Section 5.1 of the APA, Defendants [REDACTED] These failures constitute separate breaches of the APA (§ 5.1). They also present risk not just to the Prospect Hospitals, but also to any integration of the Prospect Hospitals' systems with Yale New Haven Health's own IT system should the Contemplated Transaction close.

**E. Prospect Refuses to Negotiate in Good Faith.**

155. Yale New Haven Health has remained committed to the success of the Contemplated Transaction, as evidenced by its continued negotiations with Defendants and cooperation with OHS. Since discussions between the parties began regarding the Contemplated Transaction, Yale New Haven Health has engaged in good faith negotiations with the aim of closing the Contemplated Transaction. Additionally, Yale New Haven Health has ensured governmental clearance for the Contemplated Transaction by undertaking the steps necessary to twice obtain clearance under the Hart-Scott-Rodino Improvements Act of 1976, and by cooperating with OHS over the course of 16 months, resulting in the approved application for a Certificate of Need ("CON").

156. On March 27, 2024, OHS announced that it had reached a settlement with Yale New Haven Health and Defendants on the CON required before the Contemplated Transaction could close. That CON approved the Contemplated Transaction, including, among other things, the consolidation of Manchester Memorial Hospital and Rockville General Hospital, subject to various conditions set forth in the CON. The CON also provides that, prior to any other payment issued by Yale New Haven Health in closing the Contemplated

Transaction, the Department of Revenue shall be paid \$55 million in provider tax liabilities that Defendants have agreed to pay as part of its settlement with the Department of Revenue.<sup>41</sup>

157. Despite Yale New Haven Health’s continued attempts in good faith to move forward the Contemplated Transaction, Defendants have refused to face the reality that the Businesses are but a shell of what they were when Yale New Haven Health agreed to acquire them.

158. Throughout January and February 2024, Yale New Haven Health advised Defendants that a MAC had occurred to the Businesses since the Balance Sheet Date and that Defendants had breached a number of covenants of the APA. Yale New Haven Health nonetheless made clear that it was willing to negotiate appropriate amendments to the APA to allow the parties to consummate the Contemplated Transaction.

159. Defendants “entirely and unequivocally” rejected Yale New Haven Health’s proposal and demanded that Yale New Haven Health close the Contemplated Transaction without further renegotiation. Defendants have refused to acknowledge any covenant breach and flatly denied that a MAC has occurred, despite the extensive and egregious decline in both the quality of care offered by the Prospect Hospitals and the Businesses’ financial performance—all of which is plainly evident from the face of the very documents that Defendants have provided to Yale New Haven Health.

160. On March 27, 2024, Yale New Haven Health issued a detailed notice to Defendants, outlining the various breaches of the APA described herein.

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<sup>41</sup> Certificate of Need ¶ 46.

161. On April 18, 2024, Defendants responded, offering no substantive response with respect to most of the issues detailed in Yale New Haven Health’s notice. Defendants even failed to acknowledge Yale New Haven Health’s argument that in addition to there being a MAC, Defendants have failed to comply with their obligation to operate the Businesses in the Ordinary Course during the Interim Period as set forth in Section 5.3 of the APA.

162. Given Defendants’ refusal to address the various covenant breaches—all of which render Prospect and the Selling Entities incapable of accurately making the various representations that they are required to make to close the Contemplated Transaction—Yale New Haven Health now seeks a declaratory judgment that Prospect and the Selling Entities are in breach of the various provisions of the APA described herein, that such breaches amount to a MAC, rendering Prospect and the Selling Entities unable to satisfy the closing conditions of the APA, and that, as a result, Yale New Haven Health is not obligated to close the Contemplated Transaction under the APA.

### **COUNT ONE**

#### **(DECLARATORY RELIEF)**

#### **Violation of Sections 6.1(a) and 6.4 of the Asset Purchase Agreement**

163. Plaintiff repeats and realleges each of the allegations set forth above.

164. Section 6.1(a) of the APA provides that Defendants’ contractual representations and warranties “shall be true, correct and complete in all respects” as of both the Effective Date and the Closing Date.

165. If the failure of Defendants’ representations or warranties, individually or in the aggregate, have a Material Adverse Change on the Businesses, then Yale New Haven Health is relieved of its obligation to consummate the transaction.

166. For the reasons alleged, numerous representations and warranties made by Prospect and the Selling Entities—including those set forth in Sections 3.4 (Financial Statements), 3.9 (Supplies), 3.12 (Real Property and Real Property Leases), 3.14 (Employee Relations), 3.20 (Tax Liabilities), 3.21 (Healthcare Payors) and 3.22 (Absence of Changes)—were incorrect as of the Effective Date and/or will be incorrect as of any Closing Date, and those failures have caused a Material Adverse Change to the Businesses.

167. Furthermore, Section 6.4 of the APA provides that the existence of any “Material Adverse Change since the Balance Sheet Date that is continuing” will likewise relieve Yale New Haven Health of its obligation to consummate the transaction.

168. For the reasons alleged, the financial deterioration of the Businesses, coupled with the gross mismanagement of the Businesses since the Balance Sheet Date, evinces that the Businesses have experienced a Material Adverse Change that is continuing.

169. Accordingly, Defendants are unable to truthfully and accurately make all of the representations and warranties required for closing under Section 6.1(a) of the APA and to otherwise satisfy the closing condition in Section 6.4 of the APA, thereby discharging Yale New Haven Health of its obligation to consummate the Contemplated Transaction.

## **COUNT TWO**

### **(DECLARATORY RELIEF)**

#### **Violation of Section 6.1(b) of the Asset Purchase Agreement**

170. Plaintiff repeats and realleges each of the allegations set forth above.

171. Section 6.1(b) of the APA provides that the Seller Fundamental Representations and Seller Compliance Representations “shall be true and correct in all material respects” as of both the Effective Date and the Closing Date.



172. “Seller Compliance Representations” is defined in the APA as “those representations and warranties of Seller and Selling Entities in Section 3.6 (Regulatory Compliance), Section 3.10 (Environmental Laws), Section 3.13 (Employee Benefit Plans), Section 3.14(b) (Employee Relations), Section 3.16 (Reimbursement Matters), and Section 3.19 (Privacy and Data Security)”.

173. The failure of any Seller Compliance Representation will relieve Yale New Haven Health of its obligation to consummate the transaction.

174. For the reasons alleged, the Seller Compliance Representations set forth in Sections 3.6 (Regulatory Compliance), 3.14(b) (Employee Relations), 3.16 (Reimbursement Matters) and 3.19 (Privacy and Data Security) were not true and correct in all material respects as of the Effective Date and cannot be true and correct in all material respects as of the Closing Date.

175. Accordingly, Defendants are unable to truthfully and accurately make all of the representations and warranties required for closing under Section 6.1(b) of the APA, thereby discharging Yale New Haven Health of its obligation to consummate the Contemplated Transaction.

### **COUNT THREE**

#### **(DECLARATORY RELIEF)**

#### **Violation of Section 6.1(c) of the Asset Purchase Agreement**

176. Plaintiff repeats and realleges each of the allegations set forth above.

177. Section 6.1(c) of the APA provides, in pertinent part, that “[a]ll of the covenants in this Agreement to be complied with or performed by Seller and the Selling Entities on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all material respects”.

178. Defendants' failure to comply with or perform any covenant in all material respects relieves Yale New Haven Health of its obligation to consummate the transaction.

179. For the reasons alleged, Prospect and the Selling Entities have materially violated their obligation to operate the Businesses in the Ordinary Course during the Interim Period as set forth in Section 5.3 (Operating Covenants).

180. Prospect and the Selling Entities failed to operate the Businesses in the Ordinary Course; protect patient and employee personal data; maintain facilities in substantially the same operating condition; remain current on all payment obligations, including payment of rent, accounts payable, taxes and payroll; and comply with all applicable rules, laws and regulations governing the operation of hospitals. (*See, e.g.*, APA §§ 3.19(a), 3.20(b), 5.3.)

181. Overall, the financial deterioration, coupled with the gross mismanagement of the Businesses, evinces Defendants' failure to operate the Businesses in the Ordinary Course, in violation of Section 5.3 (Operating Covenants).

182. Accordingly, Defendants are unable to comply with the conditions for closing set forth in Section 6.1(c) of the APA, thereby discharging Yale New Haven Health of its obligation to consummate the Contemplated Transaction.

## **PRAYER FOR RELIEF**

**WHEREFORE**, Yale New Haven Health respectfully requests that the Court enter judgment as follows:

1. Declaring that there has been a Material Adverse Change to the Businesses that precludes satisfaction of the closing conditions set forth in Sections 6.1(a) and 6.4 of the Asset Purchase Agreement;
2. Declaring that Defendants breached the Ordinary Course Covenants of Section 5.3 of the Asset Purchase Agreement;
3. Declaring that the Seller Compliance Representations at Sections 3.6, 3.14(b), 3.16 and 3.19 of the Asset Purchase Agreement were not true and correct in all material respects as of the Effective Date and cannot be true and correct in all material respects as of the Closing Date;
4. Declaring that Yale New Haven Health is not obliged under the Asset Purchase Agreement to close the Contemplated Transaction;
5. Awarding Yale New Haven Health reasonable attorneys' fees and costs pursuant to Section 10.2 of the Asset Purchase Agreement; and
6. Granting Yale New Haven Health such other and further relief as this Court may deem just, equitable and proper.

Respectfully submitted,

PLAINTIFF YALE NEW HAVEN HEALTH  
SERVICES CORPORATION,

By: /s/ Kim E. Rinehart

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