D-1-GN-23-000398

CAUSE NO. _____

TRAVIS COUNTY HEALTHCARE DISTRICT d/b/a CENTRAL HEALTH	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
ASCENSION TEXAS f/k/a SETON HEALTHCARE FAMILY	§	201ST, DISTRICT COURT
	§	
	§	____ JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff, Travis County Healthcare District d/b/a Central Health ("Central Health"), files this Original Petition ("Petition"), against Defendant, Ascension Texas f/k/a Seton Healthcare Family ("Ascension"). In support of this Petition, Central Health respectfully shows as follows.

I. INTRODUCTION

This lawsuit is a last resort, intended to make Ascension comply with its commitments to Central Health and, by extension, the low-income Travis County residents who depend on Central Health for healthcare services. Unlike other large urban hospital districts in Texas, Central Health does not own or operate a public hospital; instead, it relies on Ascension to fulfill the contractual commitments it has made to provide healthcare services to residents in need of such services.

In 2013, Ascension recommitted to its long-standing contractual obligation to Central Health to care for low-income Travis County residents, and it agreed to do so at "the current levels of healthcare services provided by [Ascension]" at the time. Specifically, Ascension agreed to particular performance standards that governed not only the level of healthcare services that Ascension would provide, but also the access to care and the specific types of services Ascension would provide. Those promises—memorialized in multiple new long-term contracts between Ascension and Central Health—applied to individuals enrolled in Central Health's Medical Access

Program ("MAP Patients") and to certain individuals who are "financially indigent" or "medically indigent," as defined by Ascension's Charity Care Policy ("Charity Care Patients").

In exchange for its promises to care for people in Travis County who need it most, Ascension has received not only hundreds of millions of dollars, but also the right to use and operate the Dell Seton Medical Center at the University of Texas ("Teaching Hospital"). While Ascension substantially benefited from its contracts with Central Health, it failed to keep promises set forth in the contracts. Over the years, Ascension cared for fewer and fewer MAP Patients and Charity Care Patients. Compared with the 2013 contract year, in the 2022 contract year Ascension served approximately 9,000 fewer patients, reflecting a roughly 21% reduction. Patient encounters also dropped. For example, compared with the 2013 contract year, in the 2022 contract year there were approximately 31,000 fewer patient hospital encounters (including inpatient services, outpatient services, and emergency room visits), reflecting a roughly 33% reduction.

Ascension's persistent failure to provide MAP Patients and Charity Care Patients with the agreed-upon 2013 level of services has played out not just at an overall level, but also in numerous specialty areas, including general surgery, mammography, oncology radiation therapy, orthopedics, otolaryngology, podiatry, plastic surgery, pulmonology, and rheumatology. This failure cannot be explained by a lack of need in our community or by mere happenstance; it stems from Ascension reducing, capping, and eliminating services for MAP Patients and Charity Care Patients. The consequences have been devastating. The unfortunate reality is that many low-income Travis County residents who needed critical care from Ascension did not receive that care.

In response to Ascension's failure to provide agreed-upon healthcare services, Central Health had to step up and fill gaps in care for MAP Patients and Charity Care Patients. In addition, for years, Central Health worked hard to try to make Ascension live up to its promises, first with

informal communications and negotiations and then with formal dispute-resolution efforts.

Rather than admitting its mistakes, taking responsibility for its actions, and working to fix these serious problems in a meaningful way, Ascension has misrepresented the care it provided, improperly withheld information about the care it actually provided, and blamed Central Health for Ascension's shortcomings. For example, in public forums Ascension has claimed—contrary to its own data—that it has been treating *more* MAP Patients than it was obligated to treat and that it suffered unreimbursed costs in the tens of millions of dollars for providing this care. When asked to provide support for that sum of money, however, Ascension has referred to actuarial studies about potential imputed costs, not real data about costs that it has actually incurred for actual care provided to actual patients. To add insult to injury, Ascension also has contended that, if it has failed to live up to its contractual obligations, that failure was actually Central Health's fault.

Ascension's prioritization of profits over people has resulted in delayed care, differential standards of care, and detrimental health outcomes among a group of individuals who are already disadvantaged: low-income Travis County residents whom Central Health was created to serve.

In the end, Ascension left Central Health no choice but to file this lawsuit to hold Ascension accountable for failing to keep its promises to care for people in need. Because Ascension's failures have been so consequential, Central Health is not only asserting breach-of-contract claims against Ascension, but is also seeking several judicial declarations, including a declaration needed to trigger Central Health's bargained-for option to purchase the Teaching Hospital. Ascension's right to use and operate the Teaching Hospital is predicated on Ascension keeping its promises to care for our local safety-net population. Ascension has forfeited that right. As a result, Central Health must act to ensure that, in the future, the Teaching Hospital will be positioned to deliver the level and quality of healthcare services that low-income residents of Travis County need and deserve.

II. DISCOVERY CONTROL PLAN & RULE 47(C) STATEMENT

1. Central Health intends to conduct discovery under Level 3 pursuant to Rule 190.4 of the Texas Rules of Civil Procedure.

2. In accordance with Rule 47 of the Texas Rules of Civil Procedure, Central Health states that, at this time, it seeks monetary relief over $1,000,000.00, as well as nonmonetary relief.

III. PARTIES

3. Plaintiff, Central Health, is a Texas public hospital district serving Travis County, Texas, with its principal place of business in Austin, Texas.

4. Defendant, Ascension, is a Texas nonprofit corporation whose registered office is in Travis County, Texas, at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218. Ascension may be served with process by serving its registered agent for service of process, Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company, in Travis County at 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218.

IV. JURISDICTION AND VENUE

5. The Court has subject matter jurisdiction over the lawsuit because the amount in controversy exceeds the Court's minimum jurisdictional requirements.

6. The Court has personal jurisdiction over Ascension because this action arises out of its written agreements with Central Health—a county-wide hospital district in Travis County, Texas—and because they have engaged in continuous and systematic activities within Texas.

7. The Court has specific jurisdiction over Ascension because its liability in this case arises out of its written agreements with Central Health for healthcare services rendered in Texas.

8. Venue is mandatory in Travis County under Section 15.020(b) of the Texas Civil Practice and Remedies Code because this suit arises from a "major transaction" as defined by

Section 15.020(a) of the Texas Civil Practice and Remedies Code. The consideration for the written agreements underlying this lawsuit has an aggregate value exceeding $1,000,000.00, and those agreements contain a venue-selection clause requiring that venue be in Travis County, Texas.

V. BACKGROUND FACTS

9. Central Health realleges and incorporates by reference the foregoing paragraphs.

A. Central Health has responsibilities to Travis County residents with low income, and it depends on contractual relationships to fulfill those responsibilities.

10. Central Health is a product of the Texas Constitution, Texas statutes, and Travis County voters. *See* Tex. Const. art. IX, §§ 4, 9A (addressing the creation of county-wide hospital districts responsible for providing healthcare to certain residents in need of such care); Tex. Health & Safety Code §§ 61.055–61.056 (addressing healthcare services provided by hospital districts); *id.* § 281.003(a) (providing that the creation of hospital districts in counties with at least 190,000 residents requires the approval "by a majority of the qualified voters of the county in which the proposed district is to be located who vote at an election called and held for that purpose"). Travis County voters approved Central Health's creation in 2004. Since its creation, it has been a political subdivision of the State, and it has been Travis County's hospital district, obligated to provide healthcare services to low-income residents.

11. Critical to this case, by law Central Health has "full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district" (i.e., to low-income residents of Travis County). Tex. Health & Safety Code § 281.046. The Legislature gave Central Health discretion in fulfilling this broad responsibility to people in need, in part by authorizing Central Health to "arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the

provider's location, or through the purchase of insurance for eligible residents." *Id.* § 61.056(a). This discretion is particularly important to Central Health because—unlike other large, urban hospital districts—Central Health does not own or operate its own public, safety-net hospital.[1]

12. Consistent with its legislative mandate, "[b]y caring for those who need it most, Central Health improves the health of our community." Central Health, *Vision, Mission, and Strategic Plan*, https://www.centralhealth.net/about/vision-mission-works/. In addition, consistent with its legislatively granted discretion, Central Health has strived since its creation "to eliminate health disparities to reach [its] vision of Travis County becoming a model healthy community." *Id.* To that end, Central Health has relied on Ascension to keep its long-standing contractual commitments to provide hospital and most specialty care to Travis County's safety-net population.

13. Understanding Central Health and Ascension's relationship requires understanding why it came to be in the first place and how and why it has evolved over the course of time.

B. When Central Health was formed, it became part of a safety-net system that included Seton Healthcare Family ("Seton"). Seton and Central Health entered several contracts over the years, including the Agreements that are at issue in this case.

14. Seton formally entered Travis County's public safety-net system in 1995, when it entered into a public/private relationship with the City of Austin ("City") "to provide services to support the safety-net population of Travis County[.]" Amended and Restated Master Agreement ("Master Agreement") at 1. Pursuant to the City and Seton's contractual relationship, "Seton leased the existing hospital facility ('Brackenridge Facility') from the City and assumed ownership of the hospital [that became known as] University Medical Center Brackenridge ('UMCB')[.]" *Id.* In

[1] By way of comparison, see (1) Parkland (Dallas County), https://www.parklandhealth.org/about-us; (2) Harris Health System (Harris County), https://www.harrishealth.org/about-us/harris-health; and (3) University Health System, NKA University Health (Bexar County), https://www.universityhealthsystem.com/about-us.

addition, Seton secured a license to operate the City-owned Children's Hospital (a division of the Brackenridge Facility), which ultimately enabled Seton to operate Dell Children's Medical Center.

15. When Central Health was formed in 2004, "by law, [it] assumed the governmental responsibility to coordinate, process and provide health care services for the safety net population" in Travis County. *Id.* Accordingly, Central Health stepped into the City's shoes and assumed the public-participant role in this existing public/private relationship with Seton. *Id.* Central Health thus entered into a revised Safety Net Agreement with Seton under which "Seton continued to operate [UMCB] and provide medical services to the safety-net population of Travis County." *Id.*

16. Between 2004 and 2013, Central Health and Seton worked together under the revised Safety Net Agreements to provide healthcare services for low-income Travis County residents in need. While they did invaluable work collaboratively during that 9-year period, the advent of the Texas 1115 Medicaid Waiver and the Delivery System Reform Incentive Payment ("DSRIP") program provided an opportunity "to more effectively and efficiently serve the safety net population[.]" *Id.* at 2. Accordingly, together they created a 501(c)(3) nonprofit entity called the Community Care Collaborative ("CCC") that was designed to participate in the DSRIP program and to align ambulatory, outpatient, and hospital-based safety-net systems.

17. In 2013, Central Health and Seton entered the agreements at issue in this lawsuit: (a) the Master Agreement; (b) Attachment C to the Master Agreement—the Omnibus Healthcare Services Agreement ("Omnibus Agreement"); and (c) Attachment E to the Master Agreement—the Option to Purchase ("Option Agreement" and, together with the Master Agreement and Omnibus Agreement, "the Agreements"). The Omnibus Agreement and the Option Agreement "are integral parts of [the Master] Agreement as if fully set forth [therein] and all statements appearing [in the Omnibus Agreement and Option Agreement] shall be deemed to be incorporated

into and made part of [the Master] Agreement." Master Agreement § 11.1. The initial term of the Master Agreement is 25 years from its effective date of June 1, 2013—i.e., until June 1, 2038. *Id.* § 5. Thereafter, the Master Agreement "automatically renew[s] for successive five-year terms ('Additional Terms') unless either party provides to the other party notice of non-renewal no less than one year prior to the expiration of the Initial Term or any Additional Term." *Id.*

C. The Master Agreement and the Omnibus Agreement contain material provisions addressing the level of services, access to services, and type of services and treatment that MAP Patients and Charity Care Patients are contractually entitled to receive.

18. Certain Master Agreement provisions are material here. As a preliminary matter, the Master Agreement defines "Safety Net System" to mean "that Seton shall provide inpatient care and related specialty services to the uninsured and other lower income people[,]" like MAP Patients and Charity Care Patients, and that Seton "shall maintain" a list of characteristics (subject to [Ethical and Religious Directives or] ERDs)." *Id.* at 8. These characteristics include providing "inpatient hospital services to all individuals regardless of their ability to pay" and "a majority of the total amount of inpatient care to those persons under 200% of the federal poverty level[.]" *Id.*

19. In the Master Agreement, the parties acknowledged that the Omnibus Agreement would "provide for the Covered Population [i.e., the population served through the Integrated Delivery System ("IDS") developed by the parties under the Master Agreement, *id.* at 5–6] and for the services to be provided by Seton (or Affiliate of Seton) pursuant to the IDS, the CCC, Seton's charity care program, MAP, and other applicable charity care programs." *Id.* § 4.6. Seton agreed further "to perform the services provided for" in the Omnibus Agreement. *Id.*

20. The Omnibus Agreement contains multiple material provisions. On the very first page, a recital acknowledges that the Omnibus "Agreement is intended to incorporate the current [i.e., June 1, 2013] levels of healthcare services provided by Seton to eligible residents of Travis

County enrolled in the [MAP] and Charity Care Program and to establish a process by which changes to such healthcare services are agreed upon in the future[.]" Omnibus Agreement at 1. Similarly, Section 5.5 provides that "the intent of this Agreement is to memorialize the current contractual arrangement between the parties regarding the scope, availability and current value of the Covered Healthcare Services currently provided by Seton to Covered Beneficiaries." *Id.* § 5.5. The Omnibus Agreement defines "Charity Care Healthcare Services" and "MAP Healthcare Services," which are referred to collectively as "Covered Healthcare Services." *Id.* at 3–5. MAP Healthcare Services are defined with specific reference to services set forth in Annex C to the Omnibus Agreement, and as "the level of services that Seton [was] contractually obligated to provide immediately prior to the Effective Date of [the Omnibus] Agreement [i.e., June 1, 2013] by Seton to MAP Enrollees ('Current Level of MAP Services')." *Id.* at 5. Relatedly, the Omnibus Agreement provides this covenant: "Seton shall provide MAP Healthcare Services at the Current Level of MAP Services to MAP Enrollees. Access to MAP Healthcare Services shall continue at the current level of MAP Healthcare Services unless a change is agreed upon pursuant to Section 5.5 of the [Omnibus] Agreement." *Id.* § 2.1. No such change was ever agreed upon by the parties.

21. In light of how Seton was providing healthcare services as of June 1, 2013, the Omnibus Agreement defines the term "Seton Providers" to extend beyond Seton employees. *Id.* at 7. Specifically, it is defined to "mean such physicians, physician associations or other healthcare providers (and any associated outpatient primary care or specialty care clinics operated thereby), with which Seton shall have entered into contracts, or with which Seton shall have established other arrangements, in connection with which any such physicians, physician associations or other healthcare providers (or any such associated outpatient primary care or specialty care clinics operated thereby) shall provide Covered Healthcare Services to the Covered Beneficiaries pursuant

to the provisions of this Agreement." *Id.* Section 5.6, in turn, authorizes Seton to provide Covered Healthcare Services "through the use of one or more of the Seton Providers[.]" *Id.* § 5.6(a).

22. Considering that Seton's patient population extends beyond MAP Patients and Charity Care Patients (e.g., to insured patients and to patients who pay out of pocket), the Omnibus Agreement obligates Seton to provide "MAP Healthcare Services on a nondiscriminatory basis to the MAP Enrollees" and to provide "Charity Healthcare Services on a nondiscriminatory basis to all residents of Travis County, without regard to their ability to pay." *Id.* §§ 2.11(b), 2.12(a).

23. The Omnibus Agreement defines the requisite healthcare services in multiple ways, all reflective of the importance of MAP Patients and Charity Care Patients receiving the care they need and taxpayers receiving the value of the public/private relationship between Central Health and Seton. For example, Sections 4.4 and 4.5 set forth one type of service level which is related to providing healthcare services to certain numbers of MAP Patients and Charity Care Patients respectively. Section 4.4 states that, unless otherwise agreed, "Seton *shall provide* MAP Healthcare Services to an annual average of no more than 25,000 Unique MAP Enrollees ('Baseline MAP Enrollees')." *Id.* § 4.4 (emphasis added). Section 4.5 states that, unless otherwise agreed, "Seton *shall provide* Charity Healthcare Services [to] an annual average of no more than 28,000 Unique Charity Care Patients ('Baseline Charity Enrollees')." *Id.* § 4.5 (emphasis added).

24. Section 4.6, in turn, addresses the possibility of Unique MAP Enrollees exceeding the Baseline MAP Enrollees and obligates "Central Health, the CCC, and Seton . . . (individually, jointly, and collectively as appropriate)" to "take all actions *reasonably necessary*" either to reduce the number of Unique MAP Enrollees or to "increase the number of Baseline MAP Enrollees, adjust and increase the Program Amount to Seton, modify the benefit plan, and/or take other actions." *Id.* § 4.6 (emphasis added). This section of the Omnibus Agreement also provides Seton

with a self-help remedy by protecting it from having to provide healthcare services to any enrollees above the agreed-upon numbers of baseline enrollees: "[T]he parties acknowledge and agree that Seton is not obligated under this Agreement to provide Covered Healthcare Services to any Unique MAP Enrollee in excess of the number of Baseline MAP Enrollees or to any Unique Charity Care Enrollee in excess of the number of Baseline Charity Care Enrollees." *Id.*

25. The levels of service set forth in Sections 4.4 and 4.5 have never been exceeded because Ascension has never provided healthcare services to more than an annual average of 25,000 MAP Patients or 28,000 Charity Care Patients. But, in recognition of the benefits patients receive from access to the covered services across the care continuum from providers beyond the Ascension system (e.g., primary care, specialty care, care management services, prescriptions and dental benefits), in 2016, representatives of Central Health, Seton, and the CCC acted collectively to approve expanded MAP eligibility criteria that were implemented in FY2017. Upon a joint recommendation from Central Health and Seton members of an executive working group, the CCC Board (consisting of Central Health and Seton designees) voted unanimously to expand MAP eligibility criteria—a vote which the working group at the time projected would soon push MAP enrollment numbers above 25,000. In case that MAP expansion led Seton to exceed the levels of service provision in Section 4.4, the CCC's budget included additional, specific funding of $3,000,000.00 that could be used to cover any additional cost that Seton incurred for treating MAP Patients above the 25,000 annual average. Seton (now Ascension) has never sought reimbursement from those contingency funds, presumably because—while the FY2017 MAP expansion resulted in the number of Unique MAP Enrollees exceeding 25,000, as anticipated—Seton (now Ascension) has never actually provided MAP Healthcare Services to any Unique MAP Enrollees above the 25,000 annual average set forth in Section 4.4.

26. Section 5.8 of the Omnibus Agreement is about accountability to Central Health and to Travis County residents. Section 5.8.1 authorizes Central Health's Board of Managers to "monitor, on behalf of residents of Travis County, the performance of Seton under [the Omnibus] Agreement, by reference to" Performance Standards defined in relation to (a) access to care, (b) level of services, and (c) clinical quality and patient satisfaction. *Id.* §§ 5.8.1.1–5.8.1.3. The contemplated monitoring was intended to be accomplished in part through periodic Access to Care Reports, Level of Services Reports, and Clinical Quality and Patient Satisfaction Reports provided to Central Health. *Id.*; *see also id.* § 2.14 (stating that "Seton agrees to provide the following periodic reports to Central Health" and describing contents of each of the aforementioned reports).

27. Section 5.8.2 sets forth criteria for Central Health's Board of Managers to use in "determining whether Seton shall have satisfied the Performance Standards[.]" *Id.* § 5.8.2. Section 5.8.2.1 states in pertinent part that "Seton shall be deemed to have satisfied the . . . Performance Standards relative to access to care, unless . . . subject to Section 4, *Seton does not continue to treat monthly* at Seton-Sponsored Facilities *at least the average monthly number . . . of MAP Enrollees and Charity Care Patients as required by the Baseline MAP Enrollees or Baseline Charity Enrollees*[.]" *Id.* § 5.8.2.1 (emphasis added); *see also id.* §§ 4.4–4.6 (defining and addressing Baseline MAP Enrollees and Baseline Charity Enrollees). Section 5.8.2.2 states that "Seton shall be deemed to have satisfied the . . . Performance Standards relative to level of services, unless Seton shall have *significantly and materially limited on a long-term basis* or *ceased to provide* ***one or more*** *of the Covered Healthcare Services*, without obtaining a Definitive Amendment." *Id.* § 5.8.2.2 (emphasis added). A Definitive Amendment was never obtained. In fact, such an amendment was never even proposed by Seton, even though the Omnibus Agreement sets forth a clear, remedial methodology for pursuing a proposed amendment. *See id.* § 5.10.3.

28. Finally, pertinent to this lawsuit, the Omnibus Agreement states that, "subject to Section 5.8 . . . and except for amounts, if any, that Charity Care Patients [must] . . . pay for the Charity Healthcare Services" and for specified MAP co-payments, Seton agreed "that in no event shall Seton or any Seton Provider bill . . . a Covered Beneficiary for any Covered Healthcare Service provided by Seton or any Seton Provider pursuant to [the Omnibus] Agreement." *Id.* § 5.3.

D. About five years into the Agreements, problems arose which prompted Central Health to send a letter regarding noncompliance and ultimately a formal notice of noncompliance and material breach. Disputed resolution ensued. Problems persisted.

29. Unfortunately, despite the long-term nature of, and sincere hope for, this revamped contractual relationship between Central Health and Seton, serious problems arose a few years into the revamped relationship, around the time when Seton and Ascension Health (both nonprofit entities) decided to come together under a unified brand: Ascension Seton. This was in 2017.[2]

30. In September 2018, after attempting to resolve problems only to witness them get worse, Central Health sent Ascension a letter addressing certain key problems. About eight months before sending that letter, Central Health informed Ascension that it had learned about Ascension instituting a practice of applying monthly caps to the provision of surgeries for MAP Patients and/or Charity Care Patients. Central Health also conveyed that Ascension's provision of services below the level of services contemplated in the Master Agreement and the Omnibus Agreement could constitute breaches of contract. Apparently, that message predating the letter (by about eight months) did not make a difference. In the letter, Central Health described data indicating that the cumulative number of surgeries provided to its patient population had decreased by over 30% since 2013. Central Health also informed Ascension about anecdotal information indicating that the wait

[2] *See* Ascension Seton, https://supportseton.org/ascension-seton/ (also stating: "On April 1, 2019, we took the next major step forward on our unified brand strategy as we legally changed our name from Seton Healthcare Family to Ascension Seton."). The term "Ascension" is used herein to refer to Ascension Texas, an affiliate of Ascension Seton.

between when a physician referred surgery and when the surgery occurred was becoming longer in certain specialties, with certain wait times possibly exceeding 60 days or more for patients, and that individual patients may have been harmed by Ascension's extended wait times.

31. After the letter was sent, Central Health and Ascension continued to engage in discussions about the problems. Ultimately, they agreed to analyze data and discuss a path forward in the interest of ensuring that MAP Patients and Charity Care Patients received the needed healthcare services contemplated by the Master Agreement and the Omnibus Agreement. Unfortunately, over time no durable, material changes were made by Ascension. Although the Omnibus Agreement expressly requires Ascension to maintain the levels of healthcare services that it was providing as of June 1, 2013, to both MAP Patients and Charity Care Patients, the level of services continued to decrease overall, and dramatically so for certain specialty areas.

32. On September 3, 2020—after concerted, but unsuccessful, efforts to resolve serious problems informally with Ascension—Central Health sent Ascension a Consolidated Notice of Material Breach of the Master Agreement, Material Noncompliance with the Omnibus Agreement, and Material Breach of the Omnibus Agreement ("Breach Notice"). In the Breach Notice, Central Health identified multiple breaches, including all of the ones addressed in this Petition.

33. The breaches addressed in the Breach Notice include Ascension's failure to do the following things: (a) provide healthcare services to MAP Patients and Charity Care Patients at the agreed levels, both (i) on an overall basis and (ii) for multiple specialty areas; (b) provide Covered Healthcare Services to MAP Patients and Charity Care Patients on a nondiscriminatory basis; (c) properly bill Charity Care Patients; and (d) provide information required under the Omnibus Agreement that would enable Central Health to fully assess Ascension's compliance (or noncompliance) with the Performance Standards that are set forth in the Omnibus Agreement.

34. After sending the Breach Notice, Central Health agreed to toll certain contractual deadlines and engage in a series of facilitated discussions and negotiations, in an effort to resolve problems and avoid the need for litigation. While those efforts were ongoing, the COVID-19 pandemic began and disproportionally impacted people of color and low-income people.[3] While one would expect this disproportional impact to result in MAP Patients and Charity Care Patients receiving increased levels of services from Ascension, that did not happen. To the contrary, between 2020 and 2021, there was an overall decrease in the levels of service provided and a decrease in relation to certain specialty areas. Central Health also continued to receive concerning anecdotal information about Ascension's wait lists, billing practices, caps, and reduction of healthcare services for MAP Patients and Charity Care Patients. Every single incident of insufficient care in this context can impact a human life detrimentally. Central Health had to act.

35. When the parties stopped making progress in their ongoing discussions, Central Health made the difficult, but necessary, decision to restart the clock on dispute-resolution deadlines in the Master Agreement. The hope was that this escalation and the formal mediation that ensued would finally resolve the problems and avoid the need for litigation. Unfortunately, that did not happen. Ascension's breaches persisted and necessitated the filing of this Petition. Ascension's persistent, overall failure to provide Covered Healthcare Services to MAP Patients and to Charity Care Patients—at the agreed-upon 2013 levels—is perhaps best conveyed with demonstratives. The following charts—reflecting hospital utilization (including inpatient services, outpatient services, and emergency room visits)—were prepared using Ascension's own data:

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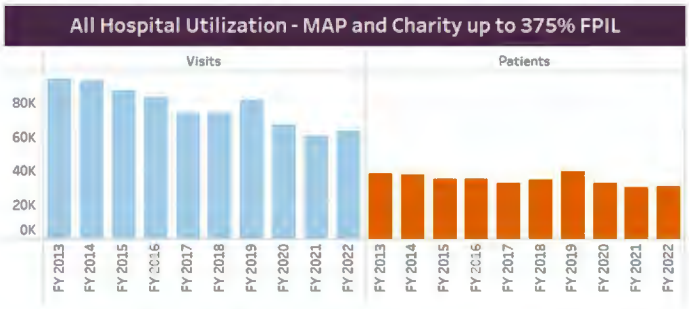
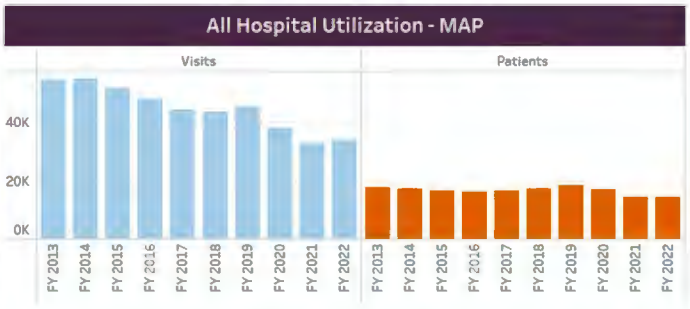
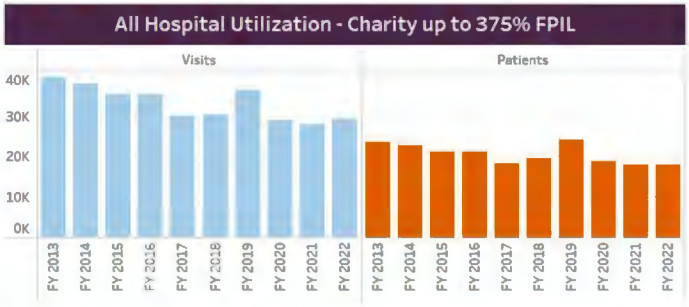
[3] *See, e.g.*, CDC, *Risk for COVID-19 Infection, Hospitalization, and Death By Race/Ethnicity*, https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-race-ethnicity.html (last updated Dec. 28, 2022); CDC, *Trends in Racial and Ethnic Disparities in COVID-19 Hospitalizations, by Region—U.S., March–Dec. 2020*, https://www.cdc.gov/mmwr/volumes/70/wr/mm7015e2.htm (Apr. 16, 2021).



	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Visits	93,580	92,433	86,735	82,875	74,000	73,475	81,217	66,912	60,657	62,997
Patients	38,638	37,842	35,362	35,097	32,763	34,756	39,947	32,943	30,164	30,664
% Δ Visits	0.0%	-1.2%	-7.3%	-11.4%	-20.9%	-21.5%	-13.2%	-28.5%	-35.2%	-32.7%
% Δ Pts	0.0%	-2.1%	-8.5%	-9.2%	-15.2%	-10.0%	3.4%	-14.7%	-21.9%	-20.6%



	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Visits	54,232	54,608	51,493	47,637	44,188	43,349	45,051	38,040	32,745	33,745
Patients	17,609	17,443	16,568	16,296	16,675	17,298	18,239	16,814	14,284	14,462
% Δ Visits	0.0%	0.7%	-5.1%	-12.2%	-18.5%	-20.1%	-16.9%	-29.9%	-39.6%	-37.8%
% Δ Pts	0.0%	-0.9%	-5.9%	-7.5%	-5.3%	-1.8%	3.6%	-4.5%	-18.9%	-17.9%



	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Visits	39,348	37,825	35,242	35,238	29,812	30,126	36,166	28,873	27,912	29,252
Patients	23,504	22,813	21,147	21,101	18,238	19,598	24,070	18,891	18,019	18,050
% Δ Visits	0.0%	-3.9%	-10.4%	-10.4%	-24.2%	-23.4%	-8.1%	-26.6%	-29.1%	-25.7%
% Δ Pts	0.0%	-2.9%	-10.0%	-10.2%	-22.4%	-16.6%	2.4%	-19.6%	-23.3%	-23.2%

FY is Oct 1 - Sept 30
Underlying data were provided by Ascension Texas
% Changes compare all years to performance in FY2013
These are draft data. Methodology subject to review, verification and adjustment.

36. These charts convey an indisputable truth: Ascension's own data shows that, for years, it has failed to provide healthcare services to MAP Patients or Charity Care Patients at the 2013 levels. In other words, it has not fulfilled a core component of the Omnibus Agreement. The downward trend reached alarming points beginning in FY2017 and has persisted through FY2022.

37. In addition to the overall trends, since 2013, Ascension's levels of service have declined overall for MAP Patients and Charity Care Patients in multiple specialty areas, including general surgery, mammography, oncology radiation therapy, orthopedics, otolaryngology, podiatry, plastic surgery, pulmonology, and rheumatology. For these areas, Ascension's data reveals the following changes in patient encounters and numbers between FY2013 and FY2022.[4]

[4] The percentages below are rounded to the nearest whole number and are based on data that Ascension has provided to Central Health over the years, pursuant to a long-standing methodology that the parties jointly developed and used. However, in November 2022, Ascension gave Central Health a new dataset that, if incorporated into the base dataset,

Specialty Area	Change in Patient Encounters Between FY2013 and FY2022	Change in Patients Served Between FY2013 and FY2022
General Surgery Clinic	-43%	-30%
Mammography	-49%	-50%
Oncology Radiation Therapy	-84%	7%
Orthopedics Clinic	-10%	-12%
Otolaryngology (ENT) Clinic	-51%	-43%
Podiatry Clinic	-42%	-69%
Plastic Surgery Clinic	-50%	-50%
Pulmonology Clinic	-48%	-50%
Rheumatology Clinic	-18%	-26%

38. These are just some examples of the specialty-area trends, and they do not capture other significant dips that occurred at various points along the way. For example, for orthopedics between FY2013 and FY2018, Ascension's data reflects a -95% difference in patient encounters and a -93% difference in patient numbers. In addition, for podiatry in that same period, Ascension's data reflects a -60% difference in patient encounters and a -62% difference in patient numbers. The bottom line here is a long-term downward trend in patient care.

39. It is important to note that, while available data reveals disturbing trends, Central Health has not been able to fully assess Ascension's performance because Ascension has not consistently provided the Access to Care Reports, Level of Services Reports, or Clinical Quality and Patient Satisfaction Reports required under Sections 2.14 and 5.8.1 of the Omnibus Agreement. Based on available information, including anecdotal information, Central Health has reason to believe that the additional information will paint an even worse picture for Ascension. But, regardless of what the additional information reveals, the bottom line is that Ascension has breached the Omnibus Agreement by not providing the information that Central Health's Board

would overwrite certain data and impact over 50,000 rows of historical data. Ascension did not (a) tell Central Health proactively that this overwrite would occur, (b) collaborate with Central Health on this overwrite, or (c) provide its methodology for developing the new dataset, despite being asked to do so. Accordingly, the percentages in this Petition are derived from the base dataset that the parties have been using for years.

of Managers needs to "to monitor, on behalf of the residents of Travis County, the performance of [Ascension] under [the Omnibus] Agreement." Omnibus Agreement § 5.8.1. This is concerning.

40. While Central Health may have to pursue discovery (through litigation) to get the information it is entitled to receive, available information reveals several potential reasons for declines in care through Ascension. First, Ascension eliminated some services altogether at certain points in time (e.g., clinics for orthopedics, ophthalmology, ENT, and podiatry). Second, Ascension unilaterally placed caps on certain surgeries and procedures (e.g., ophthalmology, colonoscopies, and gynecological surgeries). Third, Ascension drastically reduced the provision of certain services (e.g., it now offers MAP Patients and Charity Care Patients just one weekly half-day session for ENT services). Fourth, MAP Patients and/or Charity Care Patients were placed on abnormally long waitlists for Covered Healthcare Services—creating wait times that were longer than those endured by other patients—which denied MAP Patients and Charity Care Patients meaningful access to services that could be life-saving or life-altering. Although Ascension stopped measuring waits the way it used to and suggested that the problem was solved, anecdotal information indicates that MAP Patients and Charity Care Patients continue facing difficulties accessing specialty care through Ascension. Fifth, rather than screening individuals whom Ascension should have known would be eligible for Charity Care (to determine whether they were entitled to enrollment) and assessing co-pays accordingly, Ascension improperly sent these individuals bills including language that a Charity Care program exists that they might apply for, while also suggesting that they might be on the hook for bills they cannot afford to pay. That type of billing practice can scare patients into not seeking follow-up healthcare services that they desperately need. These are just a few examples of the types of business practices that Ascension has implemented and that have contributed to the substantial reduction in needed patient care.

41. The cumulative effect of Ascension's actions was to narrow the pipe, seemingly so that Ascension could avoid providing healthcare services it is contractually obligated to provide. For example, if a doctor believes her patients will have to wait months or more than a year to receive care through Ascension and that time is of the essence, the doctor may not continue to refer her patients to Ascension for care. Because Ascension is often the exclusive provider of many hospital and specialty services for MAP Patients and Charity Care Patients, a referring doctor concerned about long waits for care at Ascension might be forced to provide the best care possible in the primary-care environment while the community standard of care is out of reach. Similarly, if Ascension will not provide a needed surgery in a timely manner because that surgery exceeds a cap unilaterally determined by Ascension, then a patient may be forced to wait until the following month for the surgery, which can lead to complications and poor outcomes. In some cases, patients' conditions deteriorate or remain entirely undiagnosed to the point of seeking care in emergency rooms, contributing to higher emergency department utilization or inpatient admissions. Anecdotal information indicates that, from time to time, doctors have such a lack of confidence in their patients being able to access care through the traditional referral system that they will instead direct their patients to the emergency room as their best hope of receiving care.

42. Independent of doctors, patients may not continue to pursue care through Ascension for myriad reasons and, for low-income patients, this usually means going without needed care. For example, as indicated above, a patient receiving a bill she cannot afford to pay may simply abandon the effort to receive the healthcare service at hand, even if she ultimately would not have to pay for that service. In addition, some patients will not be able to wait extended periods of time to receive needed healthcare services, and they will either go without care or be forced to seek care repeatedly in emergency rooms instead of in other settings. A legal maxim is that justice delayed

is justice denied. The same can be true for healthcare. What happens to people when they do not receive needed care? Some people die. Other people endure worsening conditions that can deteriorate their quality of life and ability to work or that, at a minimum, yield the need for additional healthcare services that cost more money.

43. Central Health cannot sit by idly while its patient population is not receiving the healthcare services promised by Ascension. In addition to trying to get Ascension to do the right thing, Central Health has been compelled to step up and fill gaps in care created by Ascension. To that end, Central Health (individually and/or through the CCC) has entered contracts with other healthcare providers to ensure that its patient population would receive needed care where care was lacking. These additional contracts came at a cost, totaling millions of dollars in the aggregate.

44. Beyond entering contracts with other providers to fill gaps in healthcare, Central Health has dedicated substantial staff time to do work that Ascension should have been doing over the years. As one example, in addition to contracting with other providers at Austin Regional Clinic (ARC) to provide ENT services that Ascension should be providing, Central Health has assisted ARC with scheduling MAP Patients who are receiving ENT services through Ascension providers at ARC. The cumulative cost of ENT services and support alone equates to more than $1.7 million, and this is just one of several examples of the monetary impact on Central Health.

45. Under the circumstances, Central Health has given serious consideration to whether Ascension should continue to use and operate the Teaching Hospital that it is able to use and operate solely because of its commitments to care for the safety-net population in Travis County. Importantly, the Teaching Hospital replaced hospital operations previously provided by UMCB. Like UMCB, the Teaching Hospital is intended to serve as a safety-net hospital for Travis County. Indeed, it is the primary safety-net hospital for Travis County residents. In operating the Teaching

Hospital, Ascension is standing in for Central Health (as the local hospital district) in providing healthcare services to Travis County residents with low income. Thus, Ascension's right to operate the Teaching Hospital is conditioned on it fulfilling its contractional obligations to Central Health.

46. Under the Option Agreement, Central Health has a right "to purchase all . . . of the Teaching Hospital Assets (as defined [in the Option Agreement]) in exchange for payment in cash of the Purchase Price (as defined [in the Option Agreement])" if Ascension "has committed a Material Breach (as defined [in the Option Agreement])" of the Omnibus Agreement "and Central Health has terminated the Master Agreement . . . as a result of such Material Breach[.]" Option Agreement at §§ 1, 1.3.2. The term "Material Breach" is defined in pertinent part as "an act or omission by one party that constitutes a breach of the Master Agreement or any Ancillary Agreement [including the Omnibus Agreement] that materially and adversely affects the non-breaching party by changing or disrupting the business or operations or any other material aspect of the relationship between the parties as contemplated by the Master Agreement or any Ancillary Agreement after the non-breaching party has given the other party notice of such alleged breach under . . . the Master Agreement and if such act or omission has not been resolved through dispute resolution process . . . or has been otherwise cured by such other party." *Id.* § 1.3.3.

47. Central Health believes Ascension has committed Material Breaches of the Omnibus Agreement by failing to provide the agreed-upon healthcare services to MAP Patients and Charity Care Patients. This failure has occurred overall (which is a Material Breach in its own right) and for multiple specialty areas. The latter failures rise to the level of Material Breach for at least general surgery, orthopedics, otolaryngology, podiatry, and rheumatology.

48. To prepare for an uncertain future that may include owning and operating the Teaching Hospital, Central Health has been preparing to cover costs that it may incur in relation

to the Teaching Hospital. Central Health never intended to reach this point with Ascension, where it is contemplating the possibility of having to terminate the Master Agreement, purchase the Teaching Hospital Assets from Ascension, and operate the Teaching Hospital itself. Instead, Central Health intended to work collaboratively with Ascension for many years to come, and for Ascension to provide the agreed-upon services to low-income Travis County residents in need of care. But Central Health will do whatever it takes—in accordance with the Agreements— to ensure that it fulfills its statutory responsibilities to a patient population it is honored to serve.

VI. CLAIMS

A. Breach of Contract

49. Central Health realleges and incorporates by reference the foregoing paragraphs.

50. Ascension has committed Material Breaches of Sections 2.1, 5.5, 5.8.2.1, and 5.8.2.2 of the Omnibus Agreement by failing to provide Covered Healthcare Services at the agreed-upon levels to MAP Patients and Charity Care Patients and by reducing, eliminating, and/or capping such healthcare services without seeking a Definite Amendment to justify any of those actions. *See* Omnibus Agreement §§ 2.1, 5.5, 5.8.2.1–5.8.2.2. Ascension's breaches of the Omnibus Agreement have occurred both at an overall level and in relation to several specialty areas, as set forth above. These breaches have materially and adversely affected Central Health by changing and disrupting its operations, as well as material aspects of its relationship with Ascension as contemplated by the Master Agreement and the Omnibus Agreement. These breaches have persisted long after the date Central Health gave Ascension notice of them and, unfortunately, were not resolved through years of dispute-resolution efforts. Although Ascension is seemingly engaging in efforts now to cure some of these breaches, it is too little, too late. As reflected below,

Central Health seeks a declaration of Material Breaches of the Omnibus Agreement. *See* Option Agreement at 1.3.3 (defining Material Breaches that can trigger Central Health's purchase option).

51. In addition to committing the Material Breaches described above, Ascension has committed material breaches (and, necessarily, breaches) of Sections 2.1, 5.5, 5.8.2.1, and 5.8.2.2 of the Omnibus Agreement by failing to provide Covered Healthcare Services at the agreed-upon levels to MAP Patients and Charity Care Patients and by reducing, eliminating, and/or capping such healthcare services without seeking a Definite Amendment to justify any of those actions. Omnibus Agreement §§ 2.1, 5.5, 5.8.2.1–2.2; *see also, e.g.*, *Mustang Pipeline Co., Inc. v. Driver Pipeline Co. Inc.*, 134 S.W.3d 195, 199–200 (Tex. 2004) (per curiam) (setting forth and applying material-breach factors in the Restatement (Second) of Contracts § 241). Once again, this claim is about Ascension's failure at an overall level and in relation to multiple specialty areas. However, this claim extends to all specialty areas addressed in Section V.D. of the Petition, not just to those specialty areas that are the subject of Central Health's Material Breach claims above. Central Health has sustained damages for the breaches at issue in this claim, and it is entitled to recover them in accordance with Section 6.6 of the Omnibus Agreement. Additionally, if the Court determines that Material Breaches have occurred, Central Health reserves the right, in the alternative, to seek termination of the Master Agreement. *See, e.g.*, Master Agreement § 6.4.4 (addressing contractual termination); Omnibus Agreement § 6.2.2 (same, but for Central Health).

52. Central Health further asserts that Ascension has committed material breaches (and, necessarily, breaches) of Sections 2.11(b) and 2.12(a) of the Omnibus Agreement by not providing Covered Healthcare Services on a nondiscriminatory basis. More specifically, Ascension has violated Section 2.11(b) of the Omnibus Agreement by not providing "MAP Healthcare Services on a nondiscriminatory basis to the MAP Enrollees." Omnibus Agreement § 2.11(b). In addition,

it has violated Section 2.12(a) of the Omnibus Agreement by not providing "Charity Care Healthcare Services on a nondiscriminatory basis to all residents of Travis County, without regard to their ability to pay." *Id.* § 2.12(a). As a result of these material breaches and breaches, Central Health has suffered damages in an amount to be determined and disclosed during this litigation.

53. Central Health further asserts that Ascension has breached Section 5.3 of the Omnibus Agreement by improperly billing Charity Care Patients for Covered Healthcare Services. *Id.* § 5.3. As a result of these breaches, Central Health has suffered damages in an amount to be determined and disclosed during this litigation.

54. Finally, Central Health asserts that Ascension has beached Sections 2.14 and 5.8.1 of the Omnibus Agreement by not providing requisite Access to Care Reports, Level of Services Reports, and Clinical Quality and Patient Satisfaction Reports, thereby precluding Central Health from monitoring Ascension's compliance with Performance Standards "on behalf of the residents of Travis County[.]" *Id.* § 5.81; *see also id.* § 2.14. As a result of these breaches, Central Health has suffered damages in an amount to be determined and disclosed during this litigation.

B. Declaratory Judgment

55. Central Health realleges and incorporates by reference the foregoing paragraphs.

56. An actual, justiciable controversy exists between Central Health and Ascension concerning (a) Central Health's rights and obligations under the Master Agreement and Omnibus Agreement, and (b) Central Health's statutory rights and obligations independent of and in relation to the Master Agreement and the Omnibus Agreement, including when Ascension has failed persistently to fulfill its contractual obligations.

57. The Texas Constitution empowers the Texas Legislature to "authorize the creation of county-wide Hospital Districts in counties having a population in excess of 190,000[,]" and to

authorize them to levy taxes, provided they "assume full responsibility for providing medical and hospital care to needy inhabitants of the county[.]" Tex. Const. art. IX, § 4. The Constitution also allows the Legislature "by law" to "determine the health care services a hospital district is required to provide, the requirements a resident must meet to qualify for services, and any other relevant provisions necessary to regulate the provision of health care to residents." *Id.* § 9A.

58. In 1985, the Texas Legislature passed the Indigent Health Care and Treatment Act "to address the problem of medical indigence in Texas and to define the basic indigent health care responsibilities of counties, public hospitals, and hospital districts." Senate Comm., Bill Analysis, Tex. H.B. 1398, 76th Leg., R.S. (1999). This Act is codified in in Chapter 61 of the Texas Health and Safety Code. Section 61.055 provides that a hospital district "shall endeavor to provide the basic health care services a county is required to provide under Section 61.028, together with any other services required under the Texas Constitution and the statute creating the district [and] . . . coordinate the delivery of basic health care services to eligible residents[.]" Tex. Health & Safety Code § 61.055(a)–(b); *see id.* § 61.028 (listing basic healthcare services counties must provide). Section 61.056, in turn, authorizes hospital districts to "arrange to provide health care services through a local health department, a publicly owned facility, or a contract with a private provider regardless of the provider's location, or through the purchase of insurance for eligible residents." *Id.* § 61.056(a). In other words, they have discretion in carrying out their statutory obligations.

59. Assessing a hospital district's statutory obligations requires review of generally applicable legislative mandates, as well as any particular legislative mandates applicable to the hospital district in question. *See, e.g.*, *id.* § 61.055(c) ("This section may not be construed to discharge a hospital district from its obligation to provide the health care services required under

the Texas Constitution *and the statute creating the district.*") (emphasis added). In this case, for example, it requires review of Central Health's enabling legislation.

60. Central Health's enabling legislation is set forth in Chapter 281 of the Texas Health and Safety Code, which provides the basic statutory framework within which Central Health operates. Critical in this case, Section 281.046 speaks to the substantive obligations that Central Health has to low-income residents of Travis County, stating as follows: "Beginning on the date on which taxes are collected for the district, *the district assumes full responsibility for furnishing medical and hospital care for indigent and needy persons residing in the district*." Tex. Health & Safety Code § 281.046 (emphasis added). Accordingly, Central Health has had this statutory obligation since 2004. And from day one, Central Health has taken that obligation very seriously.

61. Central Health's decision to revise and continue its contractual relationship with Ascension in 2013 was driven by its goal of furthering its constitutional and statutory obligations to low-income Travis County residents. This goal is reflected in the contractual language itself. *See, e.g.*, Master Agreement at 3 (recital stating that "Central Health believes that the execution and performance of this Agreement is consistent with and will further its constitutional and statutory duty to serve and benefit the public"); *see also* Omnibus Agreement at § 5.11 ("In performing its duties and obligations under this Agreement, each party hereto shall comply with the Constitutions of the United States and the State of Texas and with all Applicable Laws . . . .").

62. In contracting with Ascension, Central Health was careful to ensure that the Agreements would not hinder its ability to fulfill its obligations to people in need of healthcare in Travis County. To that end, the Master Agreement recognizes that Ascension could not, and would not, be able to provide all of the healthcare services that Central Health is obligated to provide. *See, e.g.*, Master Agreement at 3 (recitals stating that Ascension "has certain limitations regarding

the types of medical services it may render and Central Health must be able to assure that such services are available to Travis County citizens" and that Ascension "and Central Health agree that this formal legal relationship will be enhanced by the inclusion of other major safety net providers in Travis County"). Additionally, Section 3.6 of the Master Agreement states explicitly that "Central Health retains the unilateral right in its sole and exclusive discretion to make [all of] the decisions set forth" in the section. Master Agreement § 3.6. This includes, but is not limited to, decisions regarding the "[a]pproval, support, and/or funding *any type of project* if Central Health as a hospital district is *obligated by Law* to provide such project and if the CCC is unable or unwilling to support or fund such project." Master Agreement § 3.6(5) (emphasis added).

63. Ascension, however, has construed the Master Agreement and the Omnibus Agreement as restricting Central Health's ability to provide healthcare for people in need in Travis County. For example, Ascension has suggested that Central Health cannot unilaterally fill gaps in healthcare even if Ascension has created those gaps by not fulfilling its obligations set forth in the Master Agreement and the Omnibus Agreement. These suggestions disregard Central Health's statutory obligations, as well as its contractual retention of unilateral rights. *See id.* § 3.6.

64. Also problematic is Ascension's response to Central Health contracting with other providers for healthcare services beyond what is covered by the Master Agreement or the Omnibus Agreement (hereinafter referred to as "additional services"). While Ascension has suggested that such contracting negates its obligation to provide comparable Covered Healthcare Services to MAP Patients and Charity Care Patients, Central Health believes that, if there is additional need for services, Central Health is statutorily obligated to endeavor to provide access to these services, that this may be done by entering contracts for additional services, and that those contracts have no impact on Ascension's contractual obligations relating to the Covered Healthcare Services.

65. Pursuant to Chapter 37 of the Texas Civil Practice and Remedies Code, Central Health respectfully requests that the Court enter a declaratory judgment on the following matters:

a. that Ascension committed one or more Material Breaches of the Omnibus Agreement, thereby entitling Central Health to terminate the Omnibus Agreement and Master Agreement and initiate its right to purchase the Teaching Hospital Assets under the Option Agreement;

b. that, pursuant to Sections 61.055, 61.056(a), and 281.046 of the Texas Health Safety Code, Central Health may either provide additional services directly or contract with non-Seton Providers for the provision of additional services;

c. that Central Health's provision of such additional services does not alter Ascension's obligations to provide Covered Healthcare Services, as defined by the Omnibus Agreement, to MAP Patients and to Charity Care Patients;

d. that, if Ascension does not meet its contractual obligations to provide certain Covered Healthcare Services, then Central Health—pursuant to Sections 61.055, 61.056(a), and 281.046 of the Texas Health Safety Code—may arrange unilaterally to provide those services either directly or through contractual relationships with other healthcare providers (i.e., non-Seton Providers); and

e. that, under Section 3.6 of the Master Agreement, if the CCC is unable or unwilling to support or fund any type of project that Central Health is obligated by law to provide, then Central Health in its sole and exclusive direction may unilaterally approve, support, and/or fund that project, even if it was originally handled by Ascension under the Master Agreement or the Omnibus Agreement.

VII. CONDITIONS PRECEDENT

66. Pursuant to Rule 54 of the Texas Rules of Civil Procedure, Central Health alleges that all conditions precedent have been performed or have occurred.

VIII. ATTORNEYS' FEES

67. Central Health hereby realleges and incorporates by reference the allegations set forth in each of the preceding paragraphs as if fully set forth herein.

68. Central Health seeks to recover its attorney's fees, expenses, and costs under the provisions of the written contracts as stated in Section 8.8 of the Omnibus Agreement, providing:

> Should any party to this Agreement commence legal proceedings against any of the other parties hereto to enforce the terms and provisions of this Agreement, the party (or parties) losing in such legal proceedings shall pay the reasonable attorneys' fees and expenses of the party (or parties) prevailing in such legal proceedings as determined by the court[];

and Section 11.2 of the Master Agreement, providing:

> In the event either party elects to incur legal expenses to enforce or interpret any provision of this Agreement by judicial means, the prevailing party will be entitled to recover such legal expenses, including, without limitation, attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

69. In the alternative, under Section 37.009 of the Texas Civil Practice and Remedies Code, Central Health seeks to recover its "costs and reasonable and necessary attorney's fees as are equitable and just" for its requested declaratory relief. Tex. Civ. Prac. & Rem. Code § 37.009.

70. In the alternative, under Section 38.001(b)(8) of the Texas Civil Practice and Remedies Code, Central Health seeks to recover its reasonable attorney's fees for its breach-of-contract claims against Ascension. *Id.* § 38.001(b)(8).

IX. JURY DEMAND

71. Pursuant to Rule 217 of the Texas Rules of Civil Procedure, Central Health requests a jury trial on issues triable by jury. Accordingly, it will tender the jury fee to the Clerk of the Court.

X. PRAYER

WHEREFORE, PREMISES CONSIDERED, for all of the reasons set forth above in this Petition, Central Health requests respectfully that, upon final trial or other disposition of this lawsuit, Central Health have and recover judgment against Ascension for the following:

a. the damages resulting from Ascension's breaches of the Omnibus Agreement;

b. the declarations set forth in Section VI(B) of this Petition;

c. reasonable and necessary attorneys' fees, court costs, and expenses; and

d. such other and further relief as may be just and proper under the circumstances.

Dated: January 24, 2023

Respectfully submitted,

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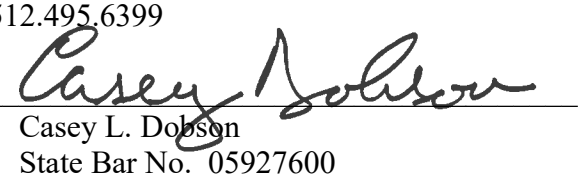
By 

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ATTORNEYS FOR CENTRAL HEALTH

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