

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA and
STATE OF MICHIGAN,

Plaintiffs,

v.

HILLSDALE COMMUNITY HEALTH
CENTER, W.A. FOOTE MEMORIAL
HOSPITAL d/b/a ALLEGIANCE
HEALTH, COMMUNITY HEALTH
CENTER OF BRANCH COUNTY, and
PROMEDICA HEALTH SYSTEM, INC.,

Defendants.

Case No.: 5:15-cv-12311
District Judge Judith E. Levy

**ALLEGIANCE HEALTH'S ANSWER AND DEFENSES TO
PLAINTIFFS' COMPLAINT**

Defendant W.A. Foote Memorial Hospital d/b/a Allegiance Health (“Allegiance”), a locally-owned and governed health system that has been nationally recognized for service to its community, hereby responds to the allegations of Plaintiffs’ Complaint (Doc. No. 1) as follows:

INTRODUCTION

Plaintiffs contend that Allegiance reached an unlawful, anticompetitive agreement with a neighboring system – Hillsdale Community Health System (“HCHC”) – to cause competitive harm to the residents of south-central Michigan.

Plaintiffs are mistaken; by failing to recognize material differences between Allegiance's conduct and that of its co-defendants, both in terms of intention and effect, Plaintiffs misperceive Allegiance's lawful, procompetitive conduct as anticompetitive conspiracy. Allegiance expressly and unequivocally denies that its conduct violated any federal or state antitrust law, and is confident that this Court will recognize that its conduct, when fully understood, promoted competition in south-central Michigan and benefitted the citizens of Hillsdale County in undeniable and, at times, life-saving ways.

More specifically, when the time comes for the parties to replace bold allegations with evidence, Allegiance intends to show that its marketing strategy in Hillsdale County was quite complex, given the vertical and horizontal nature of that relationship. Allegiance's marketing efforts focused primarily on attracting patients from Hillsdale who required the sort of higher acuity services not available at HCHC, namely, services that Allegiance offered in competition with larger systems in Ann Arbor, Kalamazoo and Toledo (including but not limited to open heart surgery). Allegiance will show the success of this strategy, as Allegiance increased its number of patients from Hillsdale County for these services, effectively providing greater patient choice as it competed successfully with the larger systems for these patients.

At the same time, Allegiance continued to compete for patients from Hillsdale County with respect to other, typically lower acuity, services that were also offered by HCHC, doing so through a collection of marketing strategies designed to operate in harmony with the strategy described above. In creating this strategy, Allegiance expected that the marketing of its higher acuity services in Hillsdale would likely enhance its reputation for quality with Hillsdale residents with respect to all of its services, and that for this reason significant marketing of these lower acuity services need not necessarily be the specific focus of Allegiance's marketing for Allegiance to attract additional patients. Again, Allegiance has been proven correct; Allegiance has also increased its share of patients from Hillsdale County in the service lines where Allegiance and HCHC are horizontal competitors, further confirming that Allegiance's overall marketing approach towards Hillsdale has had clear, procompetitive effects. This fact alone should have caused Plaintiffs to reconsider whether its characterization of Allegiance's conduct was correct; however, Plaintiffs failed to do so.

For these and many other reasons, Plaintiffs' convenient (but erroneous) characterization of Allegiance's conduct as a "naked restraint of trade" deserving *per se* classification is, Allegiance submits, plainly wrong. While such a characterization would simplify this case, it would require a gross mischaracterization/oversimplification of Allegiance's marketing strategy for

Hillsdale County, and would potentially limit this Court's opportunity to consider, and weigh, the enormous benefits to competition and consumers that Allegiance's strategy has provided. Allegiance's conduct is properly assessed under the "rule of reason" and, when it is, Allegiance is confident that this Court will recognize that Allegiance's conduct is lawful in all respects.

Allegiance now responds to the specific paragraphs of the Complaint as follows:

RESPONSE TO SPECIFIC PARAGRAPHS

1. Allegiance admits that it is a healthcare provider and that it operates the only acute-care hospital in Jackson County, Michigan. Allegiance admits that it competes with Defendants and other healthcare providers in south-central Michigan. Allegiance further admits that it engages in marketing to the residents of south-central Michigan, which has included, without limitation, advertisements, mailings to patients, health fairs, health screenings, and outreach to physicians and employers. Allegiance denies all of the remaining allegations in Paragraph 1 that pertain to Allegiance, and Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 1 that pertain to any other Defendant, and therefore denies them.

2. Allegiance admits that a 2013 oncology marketing plan contains the statement: "[A]n agreement exists with the CEO of Hillsdale Community Health

Center, Duke Anderson, to not conduct marketing activity in Hillsdale County,” but denies that the statement accurately characterizes the relationship between Allegiance and HCHC or Allegiance’s conduct in Hillsdale County. Allegiance denies all of the remaining allegations in Paragraph 2 that pertain to Allegiance, and Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 2 that pertain to any other Defendant, and therefore denies them.

3. Allegiance denies all of the allegations in Paragraph 3 as they pertain to Allegiance. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 3 that pertain to any other Defendant, and therefore denies them.

4. Allegiance denies all of the allegations in Paragraph 4 as they pertain to Allegiance. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 4 that pertain to any other Defendant, and therefore denies them.

5. Allegiance denies the allegations in Paragraph 5 as they pertain to Allegiance. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 5 that pertain to any other Defendant, and therefore denies them.

* * *

6. Allegiance admits that Plaintiffs United States of America and State of Michigan purport to jointly bring the First Cause of Action for violation of the Sherman Act, 15 U.S.C. § 1, and also admits that Plaintiff State of Michigan singly purports to bring the Second Cause of Action for violation of M.C.L. § 445.772. Allegiance denies that it has violated any federal or state antitrust law, or any law, and denies that Plaintiffs are entitled to any relief from Allegiance.

7. Allegiance admits that this Court has subject matter jurisdiction over the claims purportedly alleged in Plaintiffs' Complaint.

8. Allegiance admits that venue is proper in the Eastern District of Michigan for the claims purportedly alleged in Plaintiffs' Complaint.

9. Allegiance admits the allegations in Paragraph 9 as they pertain to Allegiance. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 9 as they pertain to any other Defendant, and therefore denies them.

* * *

10. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 10, and therefore denies them.

11. Allegiance admits that it is a Michigan non-profit corporation headquartered in Jackson, Michigan, and that it operates a general acute-care

hospital located in Jackson County, Michigan. Allegiance denies the remaining allegations in Paragraph 11.

12. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 12, and therefore denies them.

13. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 13, and therefore denies them.

* * *

14. Allegiance admits that it competes with HCHC (and other healthcare providers, including but not limited to the Defendants) with respect to healthcare services offered by both providers, and that such competition is typically based on price, quality, and other factors. Allegiance also admits that it uses marketing to inform patients, physicians, and employers about Allegiance, including its quality and scope of services. Allegiance denies the remaining allegations in Paragraph 14 as they pertain to Allegiance, and Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 14 that pertain to any other Defendant, and therefore denies them.

15. Allegiance admits that it has engaged in marketing in various ways, including, but not limited to, the use of advertisements through mailings and local media. Allegiance also admits that, on occasion, where it believes that such marketing advances its business objectives, Allegiance markets to patients by

providing free medical services, such as health screenings, physician seminars, and health fairs. Allegiance further admits that, on occasion, where it believes that such marketing advances its business objectives, Allegiance markets to physicians and employers through meetings that provide the physicians or employers with education and information about Allegiance, including its quality and range of services. Allegiance denies the remaining allegations in Paragraph 15 as they pertain to Allegiance. Allegiance lacks knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 15 as they pertain to any other Defendant, and therefore denies them.

* * *

16. Allegiance denies all of the allegations in Paragraph 16 as they pertain to Allegiance. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 16 as they pertain to any other Defendant, and therefore denies them.

17. Allegiance admits that a 2013 oncology marketing plan contains the quoted statement, but denies that the statement accurately characterizes the relationship between Allegiance and HCHC or Allegiance's conduct in Hillsdale County. Allegiance denies the remaining allegations in Paragraph 17 as they pertain to Allegiance.

18. Allegiance denies all of the allegations in Paragraph 18.

19. Allegiance admits that Anthony Gardner wrote a note to the HCHC CEO containing the quoted statement, but denies that the statement accurately characterizes the relationship between Allegiance and HCHC or Allegiance's conduct in Hillsdale County. Allegiance denies the remaining allegations in Paragraph 19 as they pertain to Allegiance. Allegiance lacks knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 19 as they pertain to any other Defendant, and therefore denies them.

20. Allegiance admits that Ms. Georgia Fojtasek, Allegiance's CEO, provided a Swiss flag to the HCHC CEO, but denies the remaining allegations in Paragraph 20 as they pertain to Allegiance.

21. Allegiance admits that a member of its staff prepared a document in 2012 that contains the quoted statement, but denies that the statement accurately characterizes Allegiance's relationship with HCHC or Allegiance's conduct in Hillsdale County. Allegiance denies the remaining allegations in Paragraph 21 as they pertain to Allegiance. Allegiance lacks knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph 21 as they pertain to any other Defendant, and therefore denies them.

22. Allegiance denies all of the allegations in Paragraph 22 as they pertain to Allegiance.

23. Allegiance denies all of the allegations in Paragraph 23 as they pertain to Allegiance, and Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 23 as they pertain to any other Defendant, and therefore denies them.

* * *

24. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 24, and therefore denies them.

25. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 25, and therefore denies them.

26. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 26, and therefore denies them.

27. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 27, and therefore denies them.

28. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 28, and therefore denies them.

* * *

29. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 29, and therefore denies them.

30. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 30, and therefore denies them.

31. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 31, and therefore denies them.

32. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 32, and therefore denies them.

* * *

33. Allegiance denies the allegations in Paragraph 33 as they pertain to Allegiance and asserts that its marketing strategy for Hillsdale County advanced procompetitive goals and objectives. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 33 as they pertain to any other Defendant, and therefore denies them.

First Cause of Action

34. Allegiance restates and incorporates herein its responses to Paragraphs 1 through 33 of Plaintiffs' Complaint.

35. Allegiance admits that with respect to healthcare services offered by both Allegiance and HCHC, Allegiance is a horizontal competitor of HCHC, but with respect to healthcare services offered by Allegiance that are not offered by HCHC (including but not limited to open heart surgery), or services offered by HCHC but not by Allegiance, Allegiance denies that Allegiance and HCHC are horizontal competitors. Allegiance denies the remaining allegations in Paragraph 35 as they pertain to Allegiance. Allegiance lacks knowledge or information

sufficient to form a belief as to the remaining allegations in Paragraph 35 as they pertain to any other Defendant, and therefore denies them.

36. Allegiance denies the allegations in Paragraph 36 as they pertain to Allegiance, including but not limited to the allegation that the purported agreement Plaintiffs allege Allegiance entered into with HCHC is subject to *per se* condemnation under the antitrust laws. Any alleged agreement involving Allegiance is properly assessed under the full rule of reason. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 36 as they pertain to any other Defendant, and therefore denies them.

37. Allegiance denies the allegations in Paragraph 37 as they pertain to Allegiance, including but not limited to the allegation that the purported agreement Plaintiffs allege Allegiance entered into with HCHC is subject to abbreviated or “quick look” rule of reason analysis. Any alleged agreement involving Allegiance is properly assessed under the full rule of reason. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 37 as they pertain to any other Defendant, and therefore denies them.

Second Cause of Action

38. Allegiance restates and incorporates herein its responses to Paragraphs 1 through 37 of Plaintiffs’ Complaint.

39. Allegiance denies the allegations in Paragraph 39 as they pertain to

Allegiance. Allegiance lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 39 as they pertain to any other Defendant, and therefore denies them.

* * *

Allegiance denies that Plaintiffs, jointly or separately, are entitled to any relief requested in Plaintiffs' Complaint from Allegiance.

General Denial

Having now fully answered Plaintiffs' specific allegations, Allegiance denies any and all allegations not specifically admitted above, whether express, implied, or contained in the headings in Plaintiffs' Complaint.

DEFENSES

Without assuming the burden of proof as to any issue that otherwise would rest upon Plaintiffs, Allegiance asserts the following additional defenses to Plaintiffs' Complaint:

First Defense

As to Allegiance, Plaintiffs' claims fail to state a cause of action upon which relief can be granted.

Second Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, because any action taken by or on behalf of Allegiance was justified, constitutes bona fide

business competition, and was taken in pursuit of its legitimate business interests, and therefore is privileged.

Third Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, because the procompetitive effects of Allegiance's conduct outweigh any potential anticompetitive effects.

Fourth Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, because they fail to allege an agreement or meeting of the minds between Allegiance and HCHC or any other actor to unlawfully restrain competition.

Fifth Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, because the conduct alleged by and between Allegiance and any other actor is as consistent with permissible competition as with illegal conspiracy.

Sixth Defense

As to Allegiance, Plaintiffs' claims are barred because any conduct engaged in by Allegiance was motivated, originated and implemented by Allegiance independently to further bona fide business competition and its legitimate business interests.

Seventh Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, because there has been no injury to competition.

Eighth Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, because of governmental compulsion.

Ninth Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, because the conduct at issue is not an anticompetitive restraint on trade.

Tenth Defense

As to Allegiance, Plaintiff's claims fail, in whole or in part, on the grounds that Plaintiffs have not alleged a relevant product and/or geographic market.

Eleventh Defense

As to Allegiance, Plaintiffs' claims improperly seek to impose liability against Allegiance for engaging in joint conduct that was necessary for Allegiance to offer services that it otherwise could not offer at all.

Twelfth Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, because of the four-year limitations periods in 15 U.S.C. § 15(b) and M.C.L. § 445.781.

Thirteenth Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, by the equitable doctrine of laches.

Fourteenth Defense

As to Allegiance, Plaintiffs' claims improperly seek to impose liability against Allegiance for the conduct of other third parties for whom Allegiance is not responsible, or through forces in the marketplace over which Allegiance has no control.

Fifteenth Defense

As to Allegiance, Plaintiffs' claims are barred, in whole or in part, because Allegiance engaged in procompetitive joint activity.

Sixteenth Defense

As to Allegiance, Plaintiffs' claims fail, in whole or in part, because Allegiance's conduct is subject to the rule of reason, and not *per se* or "quick look" principles, and Allegiance's conduct was lawful under the rule of reason.

Seventeenth Defense

As to Allegiance, Michigan's claims are barred, in whole or in part, by M.C.L. § 445.774(6).

Eighteenth Defense

As to Allegiance, Michigan's claims are barred, in whole or in part, based upon an absence of competitive injury or harm.

Nineteenth Defense

Allegiance has insufficient knowledge or information to determine whether it may have additional, as yet unstated, separate defenses available. Allegiance has not knowingly and intentionally waived any applicable separate and additional defenses and reserves the right to raise additional defenses as they become known to it through discovery in this matter. Allegiance further reserves the right to amend this Answer to add, delete, or modify defenses based upon legal theories that may be or will be divulged through clarification of Plaintiffs' Complaint, through discovery, or through further legal analysis of Plaintiffs' positions in this litigation.

WHEREFORE, Allegiance Health respectfully requests that:

- (a) Plaintiffs take nothing by reason of their Complaint;
- (b) Plaintiffs' Complaint be dismissed with prejudice;
- (c) Allegiance recover its costs incurred in this suit; and
- (d) The Court award such other and further relief as this Court deems just and proper.

Dated: August 10, 2015.

Respectfully submitted,

/s/ James M. Burns
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 10, 2015, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a Notice of Electronic Filing to all counsel or parties of record on the Service List below.

/s/ James M. Burns
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