UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

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-JEL-DRG Judge Judith E. Levy Magistrate Judge David R. Grand

PLAINTIFF UNITED STATES' MOTION AND MEMORANDUM FOR ENTRY OF THE PROPOSED FINAL JUDGMENT

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), Plaintiff United States of America moves for entry of the proposed Final Judgment with respect to Defendants Hillsdale Community Health Center ("Hillsdale"), Community Health Center of Branch County ("Branch"), and ProMedica Health System, Inc. ("ProMedica"). Entry of the proposed Final Judgment, filed on June 25, 2015, and attached as Exhibit A, would be dispositive with respect to those Defendants. The Court may enter the proposed Final

Judgment at this time without further proceedings if the Court determines that entry is in the public interest under 15 U.S.C. § 16(e) and is proper under Fed. R. Civ. P. 54(b). The United States, the State of Michigan, and Defendants Hillsdale, Branch, and ProMedica ("Settling Defendants") have stipulated to entry of the proposed Final Judgment without further notice to any party or other proceedings. Non-settling Defendant W.A. Foote Memorial Hospital, d/b/a Allegiance Health ("Allegiance") has informed the United States that Allegiance does not oppose Plaintiffs' motion, but "requests that the Court defer any action on the motion until after the October 2 Scheduling Conference, so that the issue of the Settling Defendants' status in the litigation, as described in the parties' recently-filed Rule 26 Report, can be raised with the Court prior to the Court's disposition of Plaintiffs' current motion."

The United States is filing simultaneously with this Motion and Memorandum a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (attached as Exhibit B) confirming that the settling parties have complied with all applicable provisions of the APPA. It is therefore appropriate for the Court to now make the public interest determination required by 15 U.S.C. § 16(e), and to determine whether entry of the judgment is proper under Rule 54(b).

I. Background

On June 25, 2015, the United States and the State of Michigan filed a Complaint in this matter alleging that since at least 2009, Hillsdale has agreed with each of its closest Michigan competitors – Allegiance, Branch, and ProMedica – to unlawfully allocate territories for marketing of competing healthcare services in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.[1] The Defendants' agreements have disrupted the competitive process and harmed patients, physicians, and employers.

Simultaneously with the filing of the Complaint, Plaintiffs filed a Competitive Impact Statement, a proposed Final Judgment as to the Settling Defendants, and a Stipulation and Order. The proposed Final Judgment prohibits the Settling Defendants from agreeing with other healthcare providers to prohibit or limit marketing or to divide any geographic market or territory. The proposed Final Judgment also prohibits the Settling Defendants from communicating with other Defendants about marketing plans, with limited exceptions.

The Stipulation and Order signed by Plaintiffs and Settling Defendants – and entered by the Court on July 1, 2015 (Docket No. 11) – provides that the proposed

[1] The APPA applies to "proposal[s] for a consent judgment submitted by the United States for entry in any civil proceeding brought by or on behalf of the United States under the antitrust laws [of the United States.]" 15 U.S.C. § 16(b). Therefore, the proposed Final Judgment's settlement of Plaintiff State of Michigan's claims under the Michigan Antitrust Reform Act, MCL 445.772 are not subject to the APPA.

Final Judgment may be entered after compliance with the requirements of the APPA. Entry of the proposed Final Judgment would terminate this action with respect to the Settling Defendants, except that the Court would retain jurisdiction to construe, modify, or enforce provisions of the Final Judgment and to punish violations thereof.

II. Compliance with the APPA

The APPA requires a 60-day period for submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the Competitive Impact Statement with the Court on June 25, 2015 (Docket No. 3) and published the proposed Final Judgment and Competitive Impact Statement in the *Federal Register* on July 7, 2015. *See* 80 Fed. Reg. 38736 (2015). The United States also had summaries of the terms of the proposed Final Judgment and Competitive Impact Statement, together with directions for submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* for more than seven days, beginning on July 2, 2015 and ending on July 14, 2015, and published in the *Detroit Free Press* for more than seven days, on the following July 2015 days: 2 through 9, 12, 14, 16 through 18, 20, and 22. The 60-day public comment period ended no later than September 20, 2015. The United States did not receive any comments from the public.

The Certificate of Compliance filed simultaneously with this Motion and Memorandum states that all requirements of the APPA have been satisfied. It is therefore appropriate for the Court to make the public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. The Proposed Final Judgment Satisfies the "Public Interest" Standard under the APPA

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court may consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of such entry upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A)-(B).

In the Competitive Impact Statement, the United States sets forth the public interest standard under the APPA and now incorporates those statements by reference. The public has had the opportunity to comment on the proposed Final

Judgment as required by the APPA. No member of the public has commented. As explained in the Competitive Impact Statement, entry of the proposed Final Judgment is in the public interest. Accordingly, the Court should find that entry of the proposed Final Judgment is appropriate under 15 U.S.C. § 16(e).

IV. There is no Just Reason for Delay in Entering the Proposed Final Judgment under Rule 54(b)

Since the proposed Final Judgment applies to "fewer than all" of the parties in this action, it may be entered only if the Court "expressly determines that there is no just reason for delay." Fed. R. Civ. P. 54(b); *see also Gen. Acquisition, Inc. v. GenCorp, Inc.*, 23 F.3d 1022, 1026 (6th Cir. 1994). This determination is "left to the sound judicial discretion of the district court," which should consider "judicial administrative interests as well as the equities involved." *Curtiss-Wright Corp. v. Gen'l Elec. Co.*, 446 U.S. 1, 8 (1980). "Consideration of [judicial administrative interests] is necessary to assure that application of the Rule effectively preserves the historic federal policy against piecemeal appeals." *Id.* (citation omitted).

Here, these factors weigh decisively in favor of entering the proposed Final Judgment. Entry of the proposed Final Judgment would promote judicial administrative interests because it resolves the claims against Settling Defendants, and there is nothing further for the Court to adjudicate with respect to them.

Moreover, there is no risk of piecemeal appeals, since appeal from a consent judgment is generally unavailable on the ground that the parties are deemed to have waived any objections to matters within the scope of the judgment. *See, e.g.*, *Nashville, C. & St. L. Ry. v. United States*, 113 U.S. 261, 266 (1885) ("[A] decree, which appears by the record to have been rendered by consent, is always affirmed, without considering the merits of the cause."); *In re Campbell*, 396 B.R. 500, 503 (E.D. Mich. 2008) ("The Supreme Court has long recognized that a party may not appeal an order with which he agreed in the court below.") (citing *United States v. Armour & Co.*, 402 U.S. 673, 681 (1971)). Because Settling Defendants Hillsdale, Branch, and ProMedica have not sought to preserve a right to appeal, there is no risk of piecemeal appeals by multiple defendants. *See, e.g.*, *Comerica Bank-Detroit v. Allen Industries, Inc.*, 769 F. Supp. 1408, 1410 (E.D. Mich. 1991) (determining there was no just reason for delay because "[the Court] cannot perceive any risk that the parties to these settlement agreements will appeal this judgment"). Entry of the proposed Final Judgment would also enhance judicial efficiency by promoting settlement and by providing certainty and finality to the settling parties.

Next, the equities involved weigh in favor of entry of the proposed Final Judgment. Entry would permit the full implementation of the terms of the relief. Pursuant to the June 25, 2015 Stipulation and Order, Settling Defendants have

agreed to abide by the terms of the proposed Final Judgment pending its entry by the Court. However, the appointment of an Antitrust Compliance Officer "within thirty days of entry of this Final Judgment" (Docket No. 2-1 at 6) is contingent on entry of the proposed Final Judgment by the Court. The Antitrust Compliance Officer is fundamental to ensuring that Settling Defendants' employees comply with the law and the terms of the decree. The duties of the Antitrust Compliance Officer include: (1) Distributing to and explaining the lawsuit and settlement to certain employees of Settling Defendants and briefing them on the antitrust laws, (2) Obtaining certifications from these employees that they understand the settlement and are unaware of any unreported violations of it, and (3) Informing all employees of each Settling Defendant that they may disclose, without reprisal, information concerning any potential violation of the Final Judgment or the antitrust laws to the Antitrust Compliance Officer. *Id.* at 6-7. Therefore, the relief obtained by the proposed Final Judgment cannot be fully implemented until it is entered.

District courts facing the issue of whether to direct entry under Rule 54(b) of consent decrees involving fewer than all parties in government antitrust actions routinely do so. *See, e.g., United States v. Am. Exp. Co.*, No. 10-CV-4496, 2011 WL 2974094, at *4 (E.D.N.Y. July 20, 2011) ("Here, because the final judgment to be entered is a judgment on consent, Visa and MasterCard will have effectively

waived their right to appeal, thus obviating any possibility of piecemeal appeals. Further, judicial efficiencies would be better served in this litigation by entering judgment sooner rather than later so the court—and the parties—can continue to focus on Plaintiffs' claims against the remaining American Express Defendants."); *Tennessee v. Martin*, No. 83-76, 1983 U.S. Dist. LEXIS 14109 (E.D. Tenn. Sept. 2, 1983) (dismissing fewer than all defendants).

The United States is aware of only two published opinions in federal government antitrust cases where a non-settling defendant objected to entry of the final judgment against settling defendants. In both cases, the courts found that immediate entry of the final judgments under Rule 54(b) against the settling defendants was equitable and promoted efficient judicial administration by providing the settling defendants with the benefit of their bargains and by allowing the public to benefit from the full implementation of the final judgments. *See United States v. Apple, Inc.*, 889 F. Supp. 2d 623, 643 (S.D.N.Y. 2012) ("[T]he interests of judicial administration and the equities involved weigh heavily in favor of immediate entry of judgment. . . . [The non-settling defendant's] proposal would leave [the settling defendants] in a state of legal limbo, forced to participate in discovery and defend this action at trial for fear that their settlement may be thrown out."); *United States v. Bristol-Myers Co.*, 82 F.R.D. 655, 662 (D.D.C. 1979) ("For the Court to approve anything less than a final judgment under Rule

54(b) would be tantamount to disapproval of the settlement. The objections raised by Bristol [the litigating defendant] on its own behalf certainly do not warrant depriving the people (or Beecham [the settling defendant]) of the benefit of this bargain.").

V. Conclusion

For the reasons set forth in this Motion and Memorandum and in the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest and that there is no just reason to delay entry of the proposed Final Judgment under Rule 54(b). The United States respectfully requests that the proposed Final Judgment be entered at this time.

Dated: September 24, 2015

Respectfully submitted,

/s/ Katrina Rouse
Trial Attorney
Antitrust Division
U.S. Department of Justice
Litigation I Section
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Washington, D.C. 20530
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Attorney for the United States

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2015, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of the filing to the counsel of record for all parties for civil action 5:15-cv-12311-JEL-DRG, and I hereby certify that there are no individuals entitled to notice who are non-ECF participants.

/s/ Katrina Rouse
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Index of Exhibits

Exhibit	Title/Description
A	Proposed Final Judgment
B	Certificate of Compliance with the APPA

EXHIBIT A

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

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.: 2:15-cv-12311 Hon. Judith E. Levy

[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the State of Michigan, filed their joint Complaint on June 25, 2015, alleging that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772;

AND WHEREAS, Plaintiffs and Defendants Hillsdale Community Health Center, Community Health Center of Branch County, and ProMedica Health System, Inc. (collectively, "Settling Defendants"), by their respective attorneys,

have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

AND WHEREAS, Plaintiffs require the Settling Defendants to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

NOW THEREFORE, before any testimony is taken, without this Final Judgment constituting any evidence against or admission by Settling Defendants regarding any issue of fact or law, and upon consent of the parties to this action, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the Settling Defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

II. DEFINITIONS

As used in this Final Judgment:

(A) "Allegiance" means Defendant W. A. Foote Memorial Hospital doing business as Allegiance Health, a corporation organized and existing under the laws of the State of Michigan with its headquarters in Jackson, Michigan, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates,

partnerships, and joint ventures, and (iii) their directors, officers, managers, agents, and employees.

(B) "Agreement" means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

(C) "Branch" means Defendant Community Health Center of Branch County, a municipal health facility corporation formed under Public Act 230 of the Public Acts of 1987 (MCL 331.1101, *et. seq.*) with its headquarters in Coldwater, Michigan, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents, and employees.

(D) "Communicate" means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner.

(E) "Hillsdale" means Defendant Hillsdale Community Health Center, a corporation organized and existing under the laws of the State of Michigan with its headquarters in Hillsdale, Michigan, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents, and employees.

(F) "Joint Provision of Services" means any past, present, or future coordinated delivery of any healthcare services by two or more healthcare

providers, including a clinical affiliation, joint venture, management agreement, accountable care organization, clinically integrated network, group purchasing organization, management services organization, or physician hospital organization.

(G) "Marketing" means any past, present, or future activities that are involved in making persons aware of the services or products of the hospital or of physicians employed or with privileges at the hospital, including advertising, communications, public relations, provider network development, outreach to employers or physicians, and promotions, such as free health screenings and education.

(H) "Marketing Manager" means any company officer or employee at the level of director, or above, with responsibility for or oversight of Marketing.

(I) "Person" means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

(J) "ProMedica" means Defendant ProMedica Health System, Inc., a corporation organized and existing under the laws of the State of Ohio with its headquarters in Toledo, Ohio, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, including Emma L. Bixby Medical Center, Inc. (d/b/a ProMedica Bixby Hospital), a

Michigan nonprofit corporation located in Adrian, Michigan, and Herrick Hospital, Inc. (d/b/a ProMedica Herrick Hospital), a Michigan nonprofit corporation located in Tecumseh, Michigan, but excluding Paramount Health Care, and (iii) their directors, officers, managers, agents, and employees.

(K) "Provider" means any physician or physician group and any inpatient or outpatient medical facility including hospitals, ambulatory surgical centers, urgent care facilities, and nursing facilities.

(L) "Relevant Area" means Branch, Hillsdale, Jackson, and Lenawee Counties in the State of Michigan.

III. APPLICABILITY

This Final Judgment applies to the Settling Defendants, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

(A) Each Settling Defendant shall not attempt to enter into, enter into, maintain, or enforce any Agreement with any other Provider that:

(1) prohibits or limits Marketing; or

(2) allocates any geographic market or territory between or among the Settling Defendant and any other Provider.

(B) Each Settling Defendant shall not Communicate with any other

Defendant about any Defendant's Marketing in its or the other Defendant's county, except each Settling Defendant may:

(1) communicate with any other Defendant about joint Marketing if the communication is related to the Joint Provision of Services; or

(2) communicate with any other Defendant about Marketing if the communication is part of customary due diligence relating to a merger, acquisition, joint venture, investment, or divestiture.

V. REQUIRED CONDUCT

(A) Within thirty days of entry of this Final Judgment, each Settling Defendant shall appoint an Antitrust Compliance Officer and identify to Plaintiffs his or her name, business address, and telephone number.

(B) Each Antitrust Compliance Officer shall:

(1) furnish a copy of this Final Judgment, the Competitive Impact Statement, and a cover letter that is identical in content to Exhibit 1 within sixty days of entry of the Final Judgment to each Settling Defendant's officers, directors, and Marketing Managers, and to any person who succeeds to any such position, within thirty days of that succession;

(2) annually brief each person designated in Section V(B)(1) on the meaning and requirements of this Final Judgment and the antitrust laws;

(3) obtain from each person designated in Section V(B)(1), within sixty days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not already been reported to the Settling Defendant; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against each Settling Defendant and/or any person who violates this Final Judgment;

(4) maintain a record of certifications received pursuant to this Section; and

(5) annually communicate to the Settling Defendant's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws.

(C) Each Settling Defendant shall:

(1) upon learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain all documents related to any violation or potential violation of this Final Judgment;

(2) upon learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, file with the United States and the State of Michigan a statement describing any violation or potential violation within thirty days of its becoming known. Descriptions of violations or potential violations of this Final Judgment shall include, to the extent practicable, a description of any communications constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication; and

(3) certify to the United States and the State of Michigan annually on the anniversary date of the entry of this Final Judgment that the Settling Defendant has complied with the provisions of this Final Judgment.

VI. SETTLING DEFENDANTS' COOPERATION

Each Settling Defendant shall cooperate fully and truthfully with the United States and the State of Michigan in any investigation or litigation alleging that Defendants unlawfully agreed to restrict Marketing in the Relevant Area in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, or Section 2 of the Michigan Antitrust Reform Act, MCL 445.772. Each Settling Defendant shall use its best efforts to ensure that all officers, directors, employees, and agents also fully and promptly cooperate with the United States and the State of Michigan. The full, truthful, and continuing cooperation of each Settling Defendant will include, but not be limited to:

(A) producing all documents and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine, in the possession, custody, or control of that Settling Defendant, that are relevant to the unlawful agreements among Defendants to restrict Marketing in the Relevant Area in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, or Section 2 of the Michigan Antitrust Reform Act, MCL 445.772, alleged in the Complaint, upon the request of the United States or the State of Michigan;

(B) making available for interview any officers, directors, employees, and agents if so requested by the United States or the State of Michigan; and

(C) testifying at trial and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement or declaration in court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*), or the equivalent Michigan provisions, when called upon to do so by the United States or the State of Michigan;

(D) provided however, that the obligations of each Settling Defendant to cooperate fully with the United States and the State of Michigan as described in this Section shall cease upon the sooner of (i) when all Defendants settle all claims in this matter and all settlements have been entered by this Court, or (ii) at the conclusion of all investigations and litigation alleging the non-Settling Defendant unlawfully agreed to restrict Marketing in the Relevant Area in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, or Section 2 of the Michigan Antitrust Reform Act, MCL 445.772, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in this matter.

VII. COMPLIANCE INSPECTION

(A) For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice or the Office

of the Michigan Attorney General, including consultants and other retained persons, shall, upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or of the Office of the Michigan Attorney General, and on reasonable notice to Settling Defendants, be permitted:

(1) access during Settling Defendants' office hours to inspect and copy, or at the option of the United States or the State of Michigan, to require Settling Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Settling Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Settling Defendants' officers, directors, employees, or agents, who may have individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Settling Defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or of the Office of the Michigan Attorney General, Settling Defendants shall, subject to any legally recognized privilege, submit written reports or response to written interrogatories,

under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this section shall be divulged by the United States or the State of Michigan to any person other than an authorized representative of the executive branch of the United States or the State of Michigan, except in the course of legal proceedings to which the United States or the State of Michigan is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by Settling Defendants to the United States or the State of Michigan, Settling Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and Settling Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States and the State of Michigan shall give Settling Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. INVESTIGATION FEES AND COSTS

Each Settling Defendant shall pay to the State of Michigan the sum of $5,000.00 to partially cover the attorney fees and costs of investigation.

IX. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

X. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire five years from the date of its entry.

XI. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be filed with or provided to the United States or the State of Michigan shall be sent to the persons at the addresses set forth below (or such other address as the United States or the State of Michigan may specify in writing to any Settling Defendant):

Chief
Litigation I Section
U.S. Department of Justice
Antitrust Division

450 Fifth Street, Suite 4100
Washington, DC 20530

Division Chief
Corporate Oversight Division
Michigan Department of Attorney General
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909

XII. PUBLIC INTEREST DETERMINATION

The parties, as required, have complied with the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon, and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16

_____
United States District Judge

Exhibit 1

[Letterhead of Settling Defendant]

[Name and Address of Antitrust Compliance Officer]

Dear [XX]:

I am providing you this notice to make sure you are aware of a court order recently entered by a federal judge in _____, Michigan. This court order applies to our institution and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that s/he expects you to take these obligations seriously and abide by them.

In a nutshell, the order prohibits us from agreeing with other healthcare providers, including hospitals and physicians, to limit marketing or to divide any geographic market or territory between healthcare providers. This means you cannot give any assurance to another healthcare provider that [Settling Defendant] will refrain from marketing our services, and you cannot ask for any assurance from them that they will refrain from marketing. The court order also prohibits communicating with [list other three defendants], or their employees about our marketing plans or about their marketing plans. There are limited exceptions to this restriction on communications, such as discussing joint projects, but you should check with me before relying on those exceptions.

A copy of the court order is attached. Please read it carefully and familiarize yourself with its terms. The order, rather than the above description, is controlling. If you have any questions about the order or how it affects your activities, please contact me. Thank you for your cooperation.

Sincerely,

[Settling Defendant's Antitrust Compliance Officer]

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

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-JEL-DRG Judge Judith E. Levy Magistrate Judge David R. Grand

CERTIFICATE OF COMPLIANCE WITH PROVISIONS OF THE ANTITRUST PROCEDURES AND PENALTIES ACT

Plaintiff United States of America, by the undersigned attorney, certifies that it has complied with the provisions of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), and states:

1. The proposed Final Judgment (Docket No. 2-1) and Competitive Impact Statement (Docket No. 3) were filed on June 25, 2015;

2. Pursuant to 15 U.S.C. § 16(b), the proposed Final Judgment and Competitive Impact Statement were published in the *Federal Register* on July 7, 2015, *see* 80 Fed. Reg. 38736-38745 (2015);

3. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the proposed Final Judgment and Competitive Impact Statement was published in *The Washington Post*, a newspaper of general circulation in the District of Columbia, beginning on July 2, 2015 and ending on July 14, 2015, and in the *Detroit Free Press*, a newspaper of general circulation in the Eastern District of Michigan, on July 2-9, 12, 14, 16-18, 20, and 22, 2015;

4. The 60-day comment period specified in 15 U.S.C. § 16(b) commenced no later than July 22, 2015, and terminated no later than September 20, 2015;

5. The United States did not receive any public comments on the proposed Final Judgment;

6. On July 1, 2015, pursuant to 15 U.S.C. § 16(g), Defendant ProMedica Health System, Inc. ("ProMedica") filed with the Court a description of communications by or on behalf of ProMedica with any officer or employee of the United States concerning or relevant to the proposed Final Judgment (Docket No. 10). On July 2, 2015, Defendants Hillsdale Community Health Center ("Hillsdale") and Community Health Center of Branch County ("Branch") separately filed with the Court a description of communications by or on behalf of Hillsdale or Branch with any officer or employee of the United States concerning or relevant to the proposed Final Judgment (Docket Nos. 16 and 17);

7. Pursuant to the Stipulation and Order filed on June 25, 2015 (Docket No. 2), and 15 U.S.C. § 16(e), ProMedica, Hillsdale, and Branch have stipulated that the Court may enter the proposed Final Judgment after it determines that the proposed Final Judgment serves the public interest;

8. The United States' Competitive Impact Statement demonstrates that the proposed Final Judgment satisfies the public interest standard of 15 U.S.C. § 16(e); and

9. The parties have now satisfied all the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), as a condition for entering the proposed Final Judgment, and it is now appropriate for the Court to make the necessary public interest determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

September 24, 2015

Respectfully submitted,

/s/ Katrina Rouse
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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2015, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of the filing to the counsel of record for all parties for civil action 5:15-cv-12311-JEL-DRG, and I hereby certify that there are no individuals entitled to notice who are non-ECF participants.

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