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Hackensack Meridian Health, Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

HACKENSACK MERIDIAN HEALTH, INC. and

ENGLEWOOD HEALTHCARE FOUNDATION,

Defendants.

Civil Action No. 2:20-cv-18140

**ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANT HACKENSACK MERIDIAN HEALTH, INC.**

Hackensack Meridian *Health*, Inc. (“HMH”), by and through its attorneys, hereby admits, denies, and avers as follows with respect to the Complaint. To the extent not specifically admitted in the following paragraphs, the allegations in the Complaint are denied.

GENERAL RESPONSE TO THE COMMISSION’S ALLEGATIONS

HMH denies the allegations and legal conclusions contained in Plaintiff’s unnumbered introductory paragraphs, except that HMH admits that (a) HMH and Englewood Healthcare Foundation (“Englewood”) entered into an affiliation agreement dated September 23, 2019, whereby HMH will become the sole member and the ultimate parent entity of Englewood (the

“Transaction”), and (b) the Federal Trade Commission (the “Commission”) filed an administrative complaint on December 3, 2020 and an administrative hearing is currently scheduled to begin on June 15, 2021.

HMH further states that, contrary to the allegations of the Complaint, the proposed merger between HMH and Englewood is procompetitive and will not cause a substantial lessening of competition in any relevant market. Further, the Transaction will result in substantial procompetitive benefits including, but not limited to, merger-specific pricing efficiencies, quality improvements, increased access to tertiary and quaternary services, and other procompetitive effects—all of which will directly benefit insurers, employers, and patients in and around northern New Jersey.

I.

NATURE OF THE CASE¹

1. HMH denies the allegations of Paragraph 1 of the Complaint, except that HMH admits that (a) HMH and Englewood entered into an affiliation agreement dated September 23, 2019, whereby HMH will become the sole member and the ultimate parent entity of Englewood, and (b) Englewood is a hospital and health system operating in Bergen County, New Jersey, among others areas.

2. HMH admits that, among other things, its facilities provide inpatient general acute care (“GAC”) services to patients in Bergen County and elsewhere. HMH denies the remaining allegations of Paragraph 2 of the Complaint, and specifically denies that “[t]he Proposed Transaction would enhance HMH’s dominant position in Bergen County,” that HMH and

¹ For ease of reference, HMH’s Answer utilizes the section numbering and headings in the Complaint. In so doing, HMH does not admit or concede the factual bases or legal conclusions included in the Complaint’s headings.

Englewood “compete[] head-to-head,” and that the “Proposed Transaction would eliminate this competition.”

3. To the extent that Paragraph 3 purports to describe or quote documents and/or testimony, HMM avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, HMM denies that Paragraph 3 accurately characterizes the quoted documents and/or testimony and denies that the Commission has provided the full context of the documents and/or testimony.

4. HMM denies the allegations of Paragraph 4 of the Complaint, and specifically denies that the Transaction “will substantially lessen competition” and that the “relevant geographic market for evaluating the Proposed Transaction is no broader than Bergen County.”

5. HMM denies the allegations of Paragraph 5 of the Complaint.

6. HMM admits that the 2010 Horizontal Merger Guidelines describe the Herfindahl-Hirschmann Index, which is a formula that purports to be a measurement of market concentration. HMM denies the remaining allegations of Paragraph 6 of the Complaint.

7. HMM admits that, among other things, HMM provides inpatient GAC services to patients in Bergen County, among other areas. HMM lacks sufficient knowledge or information to affirm or deny the allegations regarding Englewood contained in the second to last sentence of Paragraph 7 of the Complaint, and these allegations are therefore denied. HMM denies the remaining allegations of Paragraph 7 of the Complaint as to it, and specifically denies that HMM and Englewood are “close competitors.”

8. HMM lacks sufficient knowledge or information to affirm or deny the allegations contained in the second sentence of Paragraph 8 of the Complaint, and these allegations are therefore denied. HMM denies the remaining allegations of Paragraph 8 of the Complaint,

except that HMM admits that it negotiates and seeks to contract with commercial insurers that offer health insurance plans to individuals, employers, and their employees, among others, in northern New Jersey and elsewhere.

9. HMM lacks information sufficient to admit or deny the allegations in the first sentence of Paragraph 9 about the quality of the medical services provided by Englewood, and these allegations are therefore denied. HMM admits that, among others, (a) HMM owns and operates Hackensack University Medical Center (“HUMC”), located in Bergen County, New Jersey, and (b) HMM owns a partial interest in a joint venture that operates Pascack Valley Medical Center, also located in Bergen County, New Jersey. HMM denies the remaining allegations of Paragraph 9 of the Complaint, and specifically denies that “insurers would have few alternatives for inpatient GAC hospital services in Bergen County” after the Transaction.

10. HMM admits that it has made facility improvements and expanded its service lines to provide high-quality access to care for patients. HMM lacks information sufficient to admit or deny the allegations regarding Englewood, and these allegations in Paragraph 10 of the Complaint are therefore denied. HMM denies the remaining allegations of Paragraph 10 of the Complaint.

11. HMM denies the allegations of Paragraph 11 of the Complaint.

12. HMM denies the allegations of Paragraph 12 of the Complaint.

13. HMM denies the allegations of Paragraph 13 of the Complaint.

14. HMM admits that it stipulated to entry of a Temporary Restraining Order [Dkt. 4] and avers that the content of that stipulation speaks for itself. HMM denies the remaining allegations of Paragraph 14 of the Complaint.

II.

BACKGROUND

A.

Jurisdiction and Venue

15. HMH avers that Paragraph 15 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, HMH admits that this Court has jurisdiction over the allegations in this case under the FTC Act and the Clayton Act.

16. HMH avers that Paragraph 16 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, HMH admits that (a) this Court has personal jurisdiction over HMH as it pertains to the allegations in this case, and (b) venue is proper in this district.

17. HMH admits that Paragraph 17 of the Complaint purports to quote portions of Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and avers that the statute speaks for itself.

18. HMH avers that Paragraph 18 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, HMH denies the allegations.

B.

The Parties

19. HMH admits that the Commission has the authority to enforce Section 7 of the Clayton Act and Section 5 of the FTC Act. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 19 of the Complaint, and these allegations are therefore denied.

20. HMH denies the allegations of Paragraph 20 of the Complaint, except that HMH admits that (a) it is a New Jersey not-for-profit corporation that operates a health system headquartered in Edison, New Jersey, (b) it employs over 35,000 people throughout New Jersey, and (c) HMH reported \$5.9 billion in system wide revenue in 2019.

21. HMH denies the allegations in the first and second sentences of Paragraph 21 of the Complaint, except that HMH admits that it was formed through several mergers with certain hospitals and health systems in New Jersey over the past several years, including the merger of Hackensack University Health Network and Meridian Health on July 1, 2016. HMH admits the allegations in the fourth sentence of Paragraph 21 of the Complaint, except that HMH denies that HMH merged with JFK Health System on January 3, 2018 and avers that the merger was effective on January 1, 2018. HMH denies the allegations in the last sentence of Paragraph 21 of the Complaint, except that HMH admits that the merger of Carrier Clinic was effective on January 1, 2019. HMH admits the remaining allegations in Paragraph 21 of the Complaint.

22. HMH denies the allegations in the second sentence of Paragraph 22 of the Complaint, except that HMH admits that there are over 7,000 physicians and practitioners employed by or affiliated with HMH. HMH admits the remaining allegations in Paragraph 22 of the Complaint.

23. HMH admits the allegations in Paragraph 23 of the Complaint.

24. HMH admits that Englewood is a New Jersey not-for-profit corporation headquartered in Englewood, New Jersey that includes a hospital and health system. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 24 of the Complaint, and these allegations are therefore denied.

25. HMH admits that Englewood operates an inpatient GAC services hospital in Bergen County, New Jersey. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 25 of the Complaint, and these allegations are therefore denied.

26. HMH admits that Englewood Health Physician Network provides primary care and specialty services in New Jersey and New York. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 26 of the Complaint, and these allegations are therefore denied.

C.

The Proposed Transaction and the Commission's Response

27. HMH lacks sufficient knowledge or information to affirm or deny the allegations in Paragraph 27 of the Complaint, and these allegations are therefore denied.

28. HMH admits that it submitted a bid to Englewood in April 2019 and entered into a definitive affiliation agreement with Englewood on September 23, 2019. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations in Paragraph 28 of the Complaint, and these allegations are therefore denied.

29. HMH admits that it entered into a timing agreement with the Commission, as revised, and avers that the content of that timing agreement speaks for itself.

30. HMH admits that the Commission filed an administrative complaint on December 3, 2020 and an administrative hearing is currently scheduled to begin on June 15, 2021, pursuant to the Commission's rules and regulations applicable to administrative proceedings. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations in the first and second sentences of Paragraph 30, and these allegations are therefore denied. The remaining

allegations of Paragraph 30 state legal conclusions, and therefore no response is required. To the extent a response is required, HMH denies the remaining allegations in Paragraph 30.

31. HMH lacks sufficient knowledge or information to affirm or deny the allegations contained in Paragraph 31 of the Complaint, and these allegations are therefore denied.

III.

THE RELEVANT SERVICE MARKET

32. To the extent that the allegations of Paragraph 32 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 32 of the Complaint.

33. To the extent that the allegations of Paragraph 33 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 33 of the Complaint.

34. To the extent that the allegations of Paragraph 34 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 34 of the Complaint.

35. To the extent that the allegations of Paragraph 35 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 35 of the Complaint.

36. To the extent that the allegations of Paragraph 36 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 36 of the Complaint.

THE RELEVANT GEOGRAPHIC MARKET

37. To the extent that the allegations of Paragraph 37 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 37 of the Complaint, and specifically denies that the relevant geographic market within which to analyze inpatient GAC hospital services is no broader than Bergen County, New Jersey.

38. HMH admits that Bergen County is located in northeast New Jersey and is one of the most populous counties in the state, and further admits that Bergen County is bordered to the north and east by New York and is located across the Hudson River from Manhattan, New York. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations in Paragraph 38 of the Complaint, and these allegations are therefore denied.

39. To the extent that the allegations of Paragraph 39 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 39 of the Complaint.

40. HMH lacks sufficient knowledge or information to affirm or deny the allegations in the first sentence of Paragraph 40 of the Complaint, and these allegations are therefore denied. To the extent that the remaining allegations of Paragraph 40 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the remaining allegations of Paragraph 40 of the Complaint.

41. HMH lacks sufficient knowledge or information to affirm or deny the allegations in the first sentence of Paragraph 41 of the Complaint, and these allegations are therefore denied. To the extent that the allegations in the second sentence of Paragraph 41 state a legal conclusion,

HMH avers that it need not respond. To the extent a response is required to the second sentence of Paragraph 41, HMH denies these allegations.

42. HMH admits that it analyzes competition in Bergen County, among other areas. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations regarding Englewood in the second sentence of Paragraph 42 of the Complaint, and these allegations are therefore denied. HMH denies the remaining allegations of Paragraph 42, and specifically denies that Bergen County is “the main area of competition” between any of HMH’s hospitals and Englewood.

IV.

MARKET STRUCTURE AND THE PROPOSED TRANSACTION’S PRESUMPTIVE ILLEGALITY

43. HMH admits that the Herfindahl-Hirschmann Index is a formula described in the 2010 Horizontal Merger Guidelines that purports to be a measurement of market concentration. To the extent that the remaining allegations in Paragraph 43 of the Complaint state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies these allegations.

44. To the extent that the allegations of Paragraph 44 of the Complaint state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 44, and specifically denies that the relevant geographic market within which to analyze inpatient GAC hospital services is no broader than Bergen County, New Jersey.

45. To the extent that the allegations of Paragraph 45 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations of Paragraph 45.

V.

ANTICOMPETITIVE EFFECTS

46. To the extent that the allegations in the first sentence of Paragraph 46 state a legal conclusion, HMH avers that it need not respond. To the extent a response is required, HMH denies the allegations in the first sentence of Paragraph 46 of the Complaint. HMH denies the remaining allegations in Paragraph 46 of the Complaint.

A.

Competition among Hospitals Benefits Consumers

47. HMH denies the allegations in Paragraph 47 of the Complaint, except that HMH admits that, among other forms of competition, hospitals and health systems seek contracts with commercial insurers and seek to attract patients to their facilities.

48. HMH denies the allegations in Paragraph 48 of the Complaint, except that HMH admits that to become an in-network provider, a hospital or health system negotiates with a commercial insurer and, if mutually agreeable terms can be reached, enters into a contract.

49. HMH lacks sufficient knowledge or information to admit or deny the allegations contained in the first and second sentences of Paragraph 49 of the Complaint, and these allegations are therefore denied. HMH denies the remaining allegations contained in Paragraph 49 of the Complaint.

50. HMH lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 50 of the Complaint, and these allegations are therefore denied.

51. HMH denies the allegations contained in Paragraph 51 of the Complaint.

52. HMH denies the allegations contained in Paragraph 52 of the Complaint.

53. HMH denies the allegations contained in Paragraph 53 of the Complaint.

B.

The Proposed Transaction Would Eliminate Close Competition between HMH and Englewood

54. HMH denies the allegations in the first sentence of Paragraph 54 of the Complaint. To the extent that the second and third sentences of Paragraph 54 purport to describe or quote documents and/or testimony, HMH avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, HMH denies that Paragraph 54 accurately characterizes the quoted documents and/or testimony and denies that the Commission has provided the full context of the documents and/or testimony.

55. HMH denies the allegations contained in Paragraph 55 of the Complaint.

56. HMH denies the allegations contained in Paragraph 56 of the Complaint, and specifically denies that there is “close head-to-head competition” between HMH and Englewood.

57. HMH denies the allegations contained in Paragraph 57 of the Complaint.

C.

The Proposed Transaction Would Eliminate Non-Price Competition

58. HMH denies the allegations contained in Paragraph 58 of the Complaint, except that HMH admits that there are several hospitals and health systems in northern New Jersey and New York that provide inpatient GAC services and compete with HMH, Englewood, or both.

59. HMH admits that it is in the process of a \$714 million modernization project at HUMC which will, among other things, enhance its operating rooms, patient rooms, and facilities, but these investments will not add new inpatient beds, and further admits that HMH has invested in its physician networks and facilities to provide high quality services to patients. HMH lacks sufficient knowledge or information to affirm or deny the remaining allegations regarding Englewood contained in the first, second, and third sentences of Paragraph 59 of the

Complaint, and these allegations are therefore denied. HMH denies the remaining allegations in Paragraph 59 of the Complaint.

60. HMH denies the allegations in Paragraph 60 of the Complaint, and specifically denies that there will be any reduction in the quality of medical care, facilities, or service offerings as a result of the Transaction, and avers that patients will benefit from the Transaction with respect to the quality of and access to care and services.

VI.

ENTRY BARRIERS

61. HMH denies the allegations contained in Paragraph 61 of the Complaint.

62. HMH denies the allegations contained in Paragraph 62 of the Complaint.

VII.

EFFICIENCIES

63. HMH denies the allegations contained in Paragraph 63 of the Complaint. HMH avers that the Transaction will result in substantial merger-specific price reductions to commercial insurers and employers and will generate substantial cost savings and efficiencies.

VIII.

LIKELIHOOD OF SUCCESS ON THE MERITS, BALANCE OF EQUITIES, AND NEED FOR RELIEF

64. Paragraph 64 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, HMH denies the allegations in Paragraph 64 of the Complaint.

65. HMH denies the allegations in Paragraph 65 of the Complaint.

66. HMM lacks sufficient knowledge or information to affirm or deny the allegations contained in the second sentence of Paragraph 66 of the Complaint, and these allegations are therefore denied. HMM denies the remaining allegations in Paragraph 66 of the Complaint.

67. HMM denies the allegations in Paragraph 67 of the Complaint, and HMM avers that the proposed Transaction will result in substantial merger-specific pricing efficiencies, quality improvements, enhanced access to services, and other procompetitive effects.

68. HMM avers that Paragraph 68 of the Complaint purports to state requests for relief, and therefore no response is required. To the extent a response is required, HMM denies the allegations.

HMM'S AFFIRMATIVE DEFENSES

HMM asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Commission:

1. The Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought in the Complaint is contrary to the public interest, as the proposed merger will be procompetitive and provide significant consumer benefits, including but not limited to, increased quality and lower costs.
3. The alleged relevant service market for inpatient general acute care hospital services fails as a matter of law.
4. The alleged relevant geographic market for inpatient general acute care hospital services fails as a matter of law.
5. The Complaint fails to allege any plausible harm to competition.
6. The Complaint fails to allege any plausible harm to any consumers or to consumer welfare.

7. New entry and expansion by competitors can be timely, likely, and sufficient, and such ease of entry will ensure that there will be no harm to competition, patients and consumers, or consumer welfare.

8. The insurers and other payors at issue in the Complaint have a variety of tools to ensure that they receive competitive pricing and terms for the products and services at issue in the Complaint.

9. The proposed transaction will be procompetitive, and will result in substantial merger-specific pricing efficiencies, quality improvements, enhanced access to services, and other procompetitive effects, all of which will directly benefit insurers, employers, and patients in and around northern New Jersey. HMH does not concede any of the anticompetitive effects proffered by the Commission; moreover, the foregoing precompetitive benefits are substantial and will greatly outweigh any and all alleged anticompetitive effects.

RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES

HMH has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. HMH reserves the right to amend, or seek to amend, its answer or affirmative defenses.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, Hackensack Meridian *Health*, Inc. requests that the Court enter judgment in favor of Defendants as follows:

- A. The Complaint be dismissed with prejudice;
- B. None of the Complaint's contemplated relief issues to Plaintiff;
- C. Costs incurred in defending this action be awarded to Defendants; and
- D. Any and all other relief as the Court may deem just and proper.

Dated: January 15, 2021

Respectfully submitted,

/s/ Paul H. Saint-Antoine

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CERTIFICATION PURSUANT TO LOCAL RULE 11.2

Hackensack Meridian Health, Inc., through its counsel, hereby certifies that, to the best of its knowledge, the subject matter of this proceeding is the subject of another administrative proceeding pending before the Federal Trade Commission, Docket No. 9399, involving the same parties to this action.

/s/ Paul H. Saint-Antoine

Paul H. Saint-Antoine

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of January, 2021, a true and correct copy of the foregoing Answer was filed and served electronically by the Court's CM/ECF system upon all registered users in this action.

/s/ Paul H. Saint-Antoine

Paul H. Saint-Antoine