

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**FEDERAL TRADE COMMISSION**

600 Pennsylvania Avenue, NW  
Washington, DC 20580

and

**COMMONWEALTH OF PENNSYLVANIA**

Strawberry Square  
Harrisburg, Pennsylvania 17120

Plaintiffs,

v.

**THOMAS JEFFERSON UNIVERSITY**

1020 Walnut Street  
Philadelphia, Pennsylvania 19107

and

**ALBERT EINSTEIN HEALTHCARE  
NETWORK**

5501 Old York Road  
Philadelphia, Pennsylvania 19141

Defendants.

Civil Action No.  
2:20-cv-1113-GJP

**DEFENDANT ALBERT EINSTEIN HEALTHCARE NETWORK’S ANSWER TO  
COMPLAINT FOR TEMPORARY RESTRAINING ORDER AND  
PRELIMINARY INJUNCTION**

Defendant Albert Einstein Healthcare Network (“Einstein”), by and through its undersigned counsel, Hogan Lovells US LLP, hereby answers Plaintiffs Federal Trade Commission (“the Commission”) and Commonwealth of Pennsylvania’s (together, “Plaintiffs”) Complaint for Temporary Restraining Order and Preliminary Injunction (“Complaint”):

1. The first sentence of Paragraph 1 contains legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations. Einstein admits that it provides inpatient general acute care (“GAC”) hospital services and inpatient rehabilitation services, among other services, in Philadelphia and Montgomery Counties. Einstein admits that it provides inpatient GAC services to the uninsured communities in Philadelphia and Montgomery Counties. Einstein denies the remaining allegations contained in Paragraph 1 of the Complaint.

2. Einstein admits the allegations contained in the first sentence of Paragraph 2 of the Complaint. Einstein admits that Einstein and Jefferson contract with commercial insurers and provide inpatient GAC hospital services to those insurers’ members. Einstein denies the remaining allegations contained in Paragraph 2 of the Complaint.

3. Einstein denies the allegations contained in the first, second, third, and fourth sentences of Paragraph 3 of the Complaint. The allegations contained in the last sentence of Paragraph 3 state legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

4. Einstein denies the allegations contained in the first sentence of Paragraph 4 of the Complaint. Einstein admits that the second, third, and fourth sentences of Paragraph 4 reference internal Einstein documents. However, Einstein denies the Plaintiffs’ characterization of these documents, which take selected language out of context. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the last sentence of Paragraph 4, and therefore denies the same.

5. Einstein denies the allegations contained in Paragraph 5 of the Complaint.

6. Einstein admits that the first sentence of Paragraph 6 references the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines and states that the content of that document speaks for itself. The second and third sentences of Paragraph 6 contain legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations. Einstein denies the remaining allegations contained in Paragraph 6 of the Complaint.

7. Einstein admits that it operates a nationally renowned inpatient rehabilitation facility (“IRF”) that provides inpatient rehabilitation services under the name “MossRehab” at a main campus in Elkins Park and at units within four GAC hospital facilities. Einstein admits that Jefferson operates some IRFs in Pennsylvania. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 7, and therefore denies the same.

8. Einstein admits that MossRehab provides rehabilitation care for patients treated at GAC hospitals for various conditions. To the extent the allegations contained in the second sentence of Paragraph 8 refer to admission criteria from the Centers for Medicare & Medicaid Services (“CMS”) and commercial payers, Einstein admits that such admission criteria exist and states that the content of those criteria speak for themselves. The allegations contained in the third sentence of Paragraph 8 contain legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations. Einstein denies the allegations contained in the last sentence of Paragraph 8 of the Complaint.

9. Einstein denies the allegations contained in the first sentence of Paragraph 9 of the Complaint. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the second and third sentences of Paragraph 9, and

therefore denies the same. Einstein admits that the last sentence of Paragraph 9 refers to an internal Einstein document. However, Einstein denies the Plaintiffs' characterization of the statement referenced in Paragraph 9 of the Complaint.

10. Einstein denies the allegations contained in Paragraph 10 of the Complaint.

11. Einstein denies the allegations contained in Paragraph 11 of the Complaint.

12. Einstein admits that Einstein and Jefferson seek to contract with commercial insurers that offer plans to employers and their employees, among others, within the greater Philadelphia region. Einstein denies the remaining allegations contained in Paragraph 12 of the Complaint.

13. Einstein denies the allegations contained in Paragraph 13 of the Complaint.

14. Einstein denies the allegations contained in Paragraph 14 of the Complaint.

15. Einstein denies the allegations contained in Paragraph 15 of the Complaint.

16. Einstein denies the allegations contained in Paragraph 16 of the Complaint.

17. Einstein denies the allegations contained in Paragraph 17 of the Complaint.

18. The allegations in Paragraph 18 of the Complaint contain legal conclusions, as to which no response is required. To the extent a response is required, Einstein denies the allegations.

19. Einstein admits that it stipulated to the entry of a Temporary Restraining Order and states that the content of that stipulation speaks for itself. The remaining allegations contained in Paragraph 19 contain legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

20. Paragraph 20 of the Complaint contains legal assertions relating to jurisdiction as to which no response is required. To the extent a response is required, Einstein admits that this Court has jurisdiction over claims asserted under the FTC Act and the Clayton Act.

21. Paragraph 21 contains legal assertions relating to personal jurisdiction as to which no response is required. To the extent a response is required, Einstein admits that this Court has personal jurisdiction over Einstein as it pertains to the allegations in this case. Paragraph 21 also contains legal assertions relating to venue as to which no response is required. To the extent a response is required, Einstein admits that this case is properly before the United States District Court for the Eastern District of Pennsylvania as it pertains to the allegations in this case.

22. Einstein admits that Paragraph 22 of the Complaint purports to quote Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and states that the content of that statute speaks for itself.

23. Einstein admits that Plaintiffs purport to bring this action for preliminary injunction under Section 16 of the Clayton Act, 15 U.S.C. § 26. The remaining allegations contained in Paragraph 23 of the Complaint contain legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

24. Einstein admits that Paragraph 24 of the Complaint purports to quote Section 16 of the Clayton Act, 15 U.S.C. § 26, and states that the content of that statute speaks for itself.

25. Paragraph 25 of the Complaint contains legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

26. Einstein admits that the Commission is an administrative agency of the United States government. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 26 of the Complaint, and therefore denies the same.

27. Einstein admits that the Commonwealth of Pennsylvania is a sovereign state of the United States. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 27 of the Complaint, and therefore denies the same.

28. Einstein admits that Jefferson operates a not-for-profit academic health system in Pennsylvania. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 28 of the Complaint, and therefore denies the same.

29. Einstein admits that Jefferson operates GAC hospitals in Pennsylvania and New Jersey, IRFs in Pennsylvania, and outpatient and urgent care locations in Pennsylvania and New Jersey. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 29 of the Complaint, and therefore denies the same.

30. Einstein admits that Jefferson operates GAC hospitals in Pennsylvania. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 30, and therefore denies the same.

31. Einstein admits that Jefferson is a partial owner, through its ownership of Aria Health, of Health Partners Plans. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 31 of the Complaint, and therefore denies the same.

32. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 32 of the Complaint, and therefore denies the same.

33. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 33 of the Complaint, and therefore denies the same.

34. Einstein admits the allegations contained in the first sentence of Paragraph 34 of the Complaint. Einstein admits that it operates three GAC hospital facilities—one in Philadelphia and two in Montgomery County—and one IRF that provides inpatient rehabilitation services at five locations. Einstein denies the allegations contained in the third sentence of Paragraph 34 of the Complaint. Einstein admits the remaining allegations contained in Paragraph 34.

35. Einstein denies the allegations contained in the first sentence of Paragraph 35 of the Complaint. Einstein admits the allegations contained in the second, third, and fourth sentences of Paragraph 35 of the Complaint. Einstein admits it operates a second GAC hospital, Einstein Medical Center Montgomery, with 191-beds in East Norriton in central Montgomery County. Einstein denies the last sentence of Paragraph 35 of the Complaint.

36. Einstein denies the allegations contained in the first sentence of Paragraph 36 as stated. Einstein admits that Moss at Elkins Park has 130 licensed beds, but denies the remaining allegations contained in the second sentence of Paragraph 36 of the Complaint. Einstein admits the remaining allegations in Paragraph 36 of the Complaint.

37. Einstein admits the first sentence of Paragraph 37 of the Complaint. Einstein admits that the figure contained in the second sentence of Paragraph 37 of the Complaint was included in the parties' pre-merger regulatory filings pursuant to the Hart-Scott-Rodino Act, but denies that this figure represents a current or pertinent valuation of Einstein's assets. Einstein admits that the combined entity would operate 14 GAC hospital facilities, but denies the

remaining allegations contained in the third sentence of Paragraph 37 of the Complaint. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the last sentence of Paragraph 37, and therefore denies the same.

38. Einstein admits that it entered into a timing agreement with the FTC and states that the content of that timing agreement speaks for itself.

39. Einstein admits that the Commission initiated an administrative proceeding against the Transaction by filing a complaint before an Administrative Law Judge, the content of which speaks for itself. Einstein lacks knowledge of information sufficient to form a belief concerning the truth of the remaining allegations contained in the first and second sentences of Paragraph 39, and therefore denies the same. The remaining allegations contained in Paragraph 39 state legal assertions as to which no response is required. To the extent a response is required, Einstein admits that rules and regulations exist regarding discovery, trial, and appeal in the administrative proceeding.

40. Einstein lacks knowledge and information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 40 of the Complaint, and therefore denies the same.

41. Einstein denies the allegations contained in Paragraph 41 of the Complaint.

42. The allegations in Paragraph 42 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

43. The allegations in Paragraph 43 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

44. Einstein denies the allegations contained in Paragraph 44 of the Complaint.

45. The allegations in Paragraph 45 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

46. The allegations in Paragraph 46 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

47. The allegations in Paragraph 47 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

48. Einstein admits that IRFs are licensed as a type of hospital facility or operate under a GAC hospital license and that they provide inpatient rehabilitation services, among other services. Einstein denies the allegations contained in the second, third, and fourth sentences of Paragraph 48 of the Complaint. Einstein admits that the Centers for Medicare and Medicaid Services have requirements to obtain certification for reimbursement as an IRF and states that the contents of those requirements speak for themselves.

49. Einstein denies the allegations contained in Paragraph 49 of the Complaint.

50. The allegations in Paragraph 50 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

51. The allegations in Paragraph 51 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

52. The allegations in Paragraph 52 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

53. Einstein denies the allegations contained in the first, second, and third sentences of Paragraph 53 of the Complaint. The last sentence of Paragraph 53 contains a legal assertion, as to which no response is required. To the extent a response is required, Einstein denies the allegations.

54. Einstein denies the allegations contained in Paragraph 54 of the Complaint.

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

56. Einstein denies the allegations contained in Paragraph 56 of the Complaint.

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

58. Einstein admits that Einstein and Jefferson provide inpatient GAC hospital services to commercially insured, governmentally insured, and uninsured patients in the greater Philadelphia region. Einstein admits that it and Jefferson provide inpatient rehabilitation services to commercially insured, governmentally insured, and uninsured patients in the greater Philadelphia region. Einstein denies the remaining allegations contained in the first and second sentences of Paragraph 58 of the Complaint. Einstein denies the allegations contained in the third sentence of Paragraph 58 of the Complaint. The last sentence of Paragraph 58 contains a legal assertion as to which no response is required. To the extent a response is required, Einstein denies the allegations.

59. The first sentence of Paragraph 59 of the Complaint contains legal conclusions, as to which no response is required. To the extent a response is required, Einstein denies the allegations. Einstein denies the allegations contained in the last sentence of Paragraph 59 of the Complaint.

60. Einstein denies the allegations contained in Paragraph 60 of the Complaint.

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

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

63. Einstein admits that hospital systems seek contracts with commercial health insurers and seek to attract patients to their facilities. Einstein denies the remaining allegations contained in Paragraph 63 of the Complaint.

64. Einstein denies the allegations contained in the first sentence of Paragraph 64 of the Complaint. Einstein admits that it sometimes negotiates with commercial health insurers to be an in-network provider of GAC services. Einstein admits that the financial terms under which it is reimbursed for its GAC services are sometimes negotiated as part of that process. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations as to other hospitals in Paragraph 64, and therefore denies the same.

65. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 65 of the Complaint, and therefore denies the same.

66. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 66 of the Complaint, and therefore denies the same.

67. Einstein denies the allegations contained in Paragraph 67 of the Complaint.

68. Einstein denies the allegations contained in Paragraph 68 of the Complaint.

69. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 69 of the Complaint, and therefore denies the same.

70. Einstein denies the allegations contained in the first, second, third, and fourth sentences of Paragraph 70 of the Complaint. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the last sentence of Paragraph 70, and therefore denies the same.

71. Einstein denies the allegations in the first sentence of Paragraph 71 of the Complaint. Einstein admits that the second, third, fourth, fifth, sixth, and seventh sentences of

Paragraph 71 reference internal Einstein documents. However, Einstein denies the Plaintiffs' characterization of these documents, which take selected language out of context. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the eighth sentence of Paragraph 71, and therefore denies the same. Einstein denies the allegations contained in the last sentence of Paragraph 71 of the Complaint.

72. Einstein denies the allegations contained in Paragraph 72 of the Complaint.

73. Einstein denies the allegations contained in the first sentence of Paragraph 73 of the Complaint. Einstein admits that the second sentence of Paragraph 73 references testimony from an Einstein employee. However, Einstein denies the Plaintiffs' characterization of this testimony, which takes selected language out of context. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the third and fourth sentences of Paragraph 73, and therefore denies the same. Einstein denies the allegations contained in the fifth sentence of Paragraph 73 of the Complaint. Einstein admits that the last sentence of Paragraph 73 references an internal Einstein document. However, Einstein denies the Plaintiffs' characterization of the statement referenced in Paragraph 73 of the Complaint.

74. Einstein denies the allegations contained in Paragraph 74 of the Complaint.

75. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the first sentence of Paragraph 75 of the Complaint, and therefore denies the same. Einstein denies the allegations contained in the second sentence of Paragraph 75 of the Complaint. Einstein admits that it provides inpatient GAC hospital services and inpatient rehabilitation services in Pennsylvania. Einstein lacks knowledge or information

sufficient to form a belief concerning the truth of the remaining allegations contained in the last sentence of Paragraph 75 of the Complaint, and therefore denies the same.

76. Einstein denies the allegations contained in the first and second sentences of Paragraph 76 of the Complaint. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 76 of the Complaint, and therefore denies the same.

77. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 77 of the Complaint, and therefore denies the same.

78. Einstein denies the allegations contained in Paragraph 78 of the Complaint.

79. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the first sentence of Paragraph 79 of the Complaint, and therefore denies the same. Einstein denies the allegations contained in the second sentence of Paragraph 79 as stated. Einstein denies the allegations contained in the third sentence of Paragraph 79. Einstein denies the allegations contained in the last sentence of Paragraph 79 as to Einstein. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations as to Jefferson in the last sentence of Paragraph 79, and therefore denies the same.

80. Einstein denies the allegations contained in Paragraph 80 of the Complaint.

81. Einstein denies the allegations contained in Paragraph 81 of the Complaint.

82. Einstein denies the allegations contained in Paragraph 82 of the Complaint.

83. Einstein denies the allegations contained in Paragraph 83 of the Complaint.

84. Einstein denies the allegations contained in Paragraph 84 of the Complaint.

85. The allegations in Paragraph 85 state legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

86. The allegations in Paragraph 86 state legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

87. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the first sentence of Paragraph 87, and therefore denies the same. The remaining allegations contained in Paragraph 87 state legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

88. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the second sentence of Paragraph 88, and therefore denies the same. The remaining allegations contained in Paragraph 88 state legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

89. The allegations in Paragraph 89 states legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

90. The allegations in Paragraph 90 states legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

#### **AFFIRMATIVE DEFENSES**

Einstein asserts the following defenses, without assuming the burden of proof for any defense that would otherwise rest with the Plaintiffs. Einstein has not knowingly or intentionally waived any applicable defense, and hereby reserves the right to rely upon any other applicable defense that may become available or apparent during the course of this action. Einstein reserves the right to amend, or seek to amend, this Answer to assert such defenses.

**FIRST DEFENSE**

The Complaint fails to state a claim on which relief can be granted.

**SECOND DEFENSE**

The combination of Jefferson and Einstein's hospital systems will be pro-competitive, and will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects, which will inure to the benefit of consumers of healthcare in the greater Philadelphia region. Einstein does not concede any of the anticompetitive effects proffered by the Plaintiffs, but in any event, represents that the foregoing procompetitive benefits are substantial and will greatly outweigh any and all of the proffered anticompetitive effects.

**THIRD DEFENSE**

Einstein asserts the weakened competitor and failing firm defenses.

**FOURTH DEFENSE**

Einstein incorporates by reference the affirmative defenses put forth by Jefferson in its Answer to the Plaintiffs' Complaint.

**NOTICE OF CONTEMPLATED RELIEF**

WHEREFORE, Albert Einstein Healthcare Network requests that the Court enter judgment in its favor as follows:

- A. The Complaint be dismissed with prejudice;
- B. None of the Complaint's contemplated relief issues to the FTC;
- 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: March 19, 2020

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**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that on March 19, 2020, a true and correct copy of the foregoing Defendant Albert Einstein Healthcare Network's Answer to Complaint for Temporary Restraining Order and Preliminary Injunction was served and, therefore, made available to all counsel of record, as follows:

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