

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

**FEDERAL TRADE COMMISSION**

and

**COMMONWEALTH OF PENNSYLVANIA,**

Plaintiffs,

v.

**THOMAS JEFFERSON UNIVERSITY**

and

**ALBERT EINSTEIN HEALTHCARE  
NETWORK,**

Defendants.

Civil Action No. 2:20-cv-01113

**DEFENDANT THOMAS JEFFERSON UNIVERSITY'S  
ANSWER TO COMPLAINT**

Thomas Jefferson University (“Jefferson”), 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.

Jefferson denies the allegations and legal conclusions contained in Plaintiffs’ unnumbered introductory paragraphs, except that Jefferson admits that (a) Jefferson and Albert Einstein Healthcare Network (“Einstein”) entered into a System Integration Agreement dated September 14, 2018, whereby Jefferson will become the sole member of Einstein and the ultimate parent entity of Einstein (the “Transaction”), and (b) the Federal Trade Commission (the “Commission”) filed an administrative complaint on February 27, 2020 and an administrative hearing is currently scheduled to begin on September 1, 2020.

Jefferson further states that the merger between Jefferson and Einstein is procompetitive, will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects—all of which will directly benefit consumers—and will provide much needed financial support for Einstein’s health care facilities, which serve patients in some of the most vulnerable areas of the greater Philadelphia region.

**I.**

**NATURE OF THE CASE<sup>1</sup>**

1. The first sentence of Paragraph 1 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, Jefferson denies the allegations in the first sentence of Paragraph 1. Jefferson denies the remaining allegations of Paragraph 1 of the Complaint, except that Jefferson admits that (a) Jefferson and Einstein provide inpatient general acute care (“GAC”) hospital services and inpatient acute rehabilitation services, among other services, in Philadelphia and Montgomery Counties, and (b) the Transaction would combine these two hospital systems into one integrated health system.

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

3. Jefferson denies the allegations in the first sentence of Paragraph 3 of the Complaint, and specifically denies that Jefferson and Einstein “compete directly and significantly.” Jefferson lacks sufficient knowledge or information to affirm or deny the allegations contained in the second, third, and fourth sentences of Paragraph 3 of the Complaint,

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<sup>1</sup> For ease of reference, Jefferson’s Answer utilizes the section headings of Plaintiffs’ Complaint. In so doing, Jefferson does not admit or concede the factual bases or legal conclusions included in the Complaint’s headings.

and these allegations are therefore denied. To the extent that the remaining allegations of Paragraph 3 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the remaining allegations of Paragraph 3 of the Complaint.

4. To the extent that Paragraph 4 purports to describe or quote documents and/or testimony, Jefferson avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, Jefferson denies that Paragraph 4 accurately characterizes the quoted documents and/or testimony and denies that Plaintiffs have provided the full context of the documents and/or testimony. Jefferson denies the remaining allegations of Paragraph 4 of the Complaint, and specifically denies that Jefferson and Einstein are “close competitors.”

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

6. Jefferson 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. To the extent that the remaining allegations of Paragraph 6 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the remaining allegations of Paragraph 6 of the Complaint.

7. Jefferson denies the allegations of Paragraph 7 of the Complaint, except that Jefferson admits that (a) Einstein operates an inpatient rehabilitation facility under the name “MossRehab” at sites within the greater Philadelphia region, and (b) Jefferson operates Magee Rehabilitation Hospital and other inpatient rehabilitation facilities within the greater Philadelphia region.

8. To the extent that the allegations in the second and third sentences of Paragraph 8 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is

required to the second and third sentences of Paragraph 8 of the Complaint, Jefferson denies the allegations. Jefferson denies the remaining allegations of Paragraph 8, except that Jefferson admits that Jefferson and Einstein each provide post-acute rehabilitation care for patients treated at GAC hospitals for various conditions, among other services.

9. To the extent that Paragraph 9 purports to describe or quote documents and/or testimony, Jefferson avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, Jefferson denies that Paragraph 9 accurately characterizes the quoted documents and/or testimony and denies that Plaintiffs have provided the full context of the documents and/or testimony. Jefferson denies the remaining allegations of Paragraph 9 of the Complaint.

10. To the extent that the allegations of Paragraph 10 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 10 of the Complaint.

11. To the extent that the allegations of Paragraph 11 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 11 of the Complaint.

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

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

14. Jefferson admits that it has provided quality medical services at competitive rates and terms. Jefferson lacks information sufficient to admit or deny the allegations about the quality of the medical services that have been provided by Einstein, or about its rates and terms

for such medical services, and these allegations in Paragraph 14 of the Complaint are therefore denied. Jefferson denies the remaining allegations of Paragraph 14 of the Complaint.

15. To the extent that the allegations in the first sentence of Paragraph 15 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required to the first sentence of Paragraph 15 of the Complaint, Jefferson denies the allegations and specifically denies that the proposed Transaction will “substantially lessen competition” or “cause significant harm to consumers.” Jefferson denies the remaining allegations of Paragraph 15 of the Complaint.

16. Jefferson denies the allegations of Paragraph 16 of the Complaint.

17. Jefferson denies the allegations of Paragraph 17 of the Complaint.

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

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

## **II.**

### **JURISDICTION AND VENUE**

20. Jefferson avers that Paragraph 20 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, Jefferson admits that this Court has jurisdiction over the allegations in this case under the FTC Act and the Clayton Act.

21. Jefferson avers that Paragraph 21 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, Jefferson admits that (a) this Court has personal jurisdiction over Jefferson as it pertains to the allegations in this case, and (b) 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. Jefferson admits that Paragraph 22 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.

23. Jefferson avers that Paragraph 23 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, Jefferson denies the allegations of Paragraph 23 of the Complaint.

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

25. Jefferson avers that Paragraph 25 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, Jefferson denies the allegations.

### **III.**

#### **BACKGROUND**

##### **A.**

##### **The Parties**

26. Jefferson admits that the Commission has the authority to enforce Section 7 of the Clayton Act and Section 5 of the FTC Act. Jefferson 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.

27. Jefferson admits the first sentence of Paragraph 27 of the Complaint. The second sentence of Paragraph 27 states legal conclusions, and therefore no response is required. To the extent a response is required, Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 27 of the Complaint, and these allegations are therefore denied.

28. Jefferson denies the allegations in the first sentence of Paragraph 28 of the Complaint, except that Jefferson admits that it is a Pennsylvania not-for-profit corporation that operates a university and a health system headquartered in Philadelphia. Jefferson denies the allegations in the second sentence of Paragraph 28 of the Complaint, except that Jefferson admits that it employs over 30,000 people, including approximately 6,100 employed or affiliated physicians and practitioners and approximately 7,400 employed nurses. Jefferson admits the remaining allegations in Paragraph 28 of the Complaint.

29. Jefferson admits that it operates 11 GAC hospital facilities in Pennsylvania and New Jersey. Jefferson admits the remaining allegations in Paragraph 29 of the Complaint.

30. Jefferson admits that it operates five GAC hospital facilities in Philadelphia County—Thomas Jefferson University Hospital, Jefferson Hospital for Neurosciences, Methodist Hospital, Jefferson Frankford Hospital (f/k/a Aria Frankford Hospital), and Jefferson Torresdale Hospital (f/k/a Aria Torresdale Hospital)—and two GAC hospital facilities in Montgomery County—Abington Hospital and Lansdale Hospital (together, f/k/a Abington Health).

31. Jefferson denies the allegations in the first sentence of Paragraph 31 of the Complaint, except that Jefferson admits that it has merged with certain hospital systems and

inpatient rehabilitation facilities in Pennsylvania and New Jersey over the past several years. Jefferson admits the remaining allegations in Paragraph 31 of the Complaint.

32. Jefferson admits the allegations in Paragraph 32 of the Complaint.

33. Jefferson denies the allegation in the second sentence of Paragraph 33 of the Complaint that Magee's bed count is being reduced from 96 to 82 and avers that Magee recently completed a renovation and has reduced its licensed bed count from 96 to 83. Jefferson denies the allegations in the second sentence of Paragraph 33 of the Complaint, except that Jefferson admits that it operates units providing inpatient rehabilitation services at the Jefferson Acute Rehabilitation Unit and the Abington Acute Rehabilitation Unit. Jefferson admits the remaining allegations in Paragraph 33 of the Complaint.

34. Jefferson admits that Einstein is a Pennsylvania not-for-profit corporation that operates an academic health system headquartered in North Philadelphia and that Einstein operates GAC hospitals and an inpatient rehabilitation facility. Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 34 of the Complaint, and these allegations are therefore denied.

35. Jefferson admits that Einstein provides inpatient GAC hospital services at locations in Philadelphia and Montgomery Counties. Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 35 of the Complaint, and these allegations are therefore denied.

36. Jefferson admits that Einstein provides inpatient rehabilitation services through MossRehab at several locations. Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 36 of the Complaint, and these allegations are therefore denied.



**B.**

**The Transaction and the Commission's Response**

37. Jefferson admits the allegations in the first sentence of Paragraph 37 of the Complaint. Jefferson admits that the figure 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 for purposes of computation of the filing fee, but denies that this figure represents a current or pertinent valuation of Einstein's assets. Jefferson denies the allegations contained in the third sentence of Paragraph 37 of the Complaint, except that Jefferson admits that the combined health system would operate 14 GAC hospital facilities, including 11 in Pennsylvania. Jefferson lacks sufficient knowledge or information to affirm or deny the allegations in the last sentence of Paragraph 37 of the Complaint, and these allegations are therefore denied.

38. Jefferson admits that it entered into a timing agreement with the FTC, as revised, and avers that the content of that timing agreement speaks for itself.

39. Jefferson admits that the Commission filed an administrative complaint on February 27, 2020 and an administrative hearing is currently scheduled to begin on September 1, 2020, pursuant to the Commission's rules and regulations applicable to administrative proceedings. Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations in the first and second sentences of Paragraph 39 of the Complaint, and these allegations are therefore denied. The remaining allegations of Paragraph 39 state legal conclusions, and therefore no response is required. To the extent a response is required, Jefferson denies the remaining allegations of Paragraph 39 of the Complaint.

40. Jefferson lacks sufficient knowledge or information to affirm or deny the allegations contained in Paragraph 40 of the Complaint, and these allegations are therefore denied.

**III.**

**THE RELEVANT SERVICE MARKETS**

41. To the extent that the allegations of Paragraph 41 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 41 of the Complaint.

**A.**

**Inpatient GAC Hospital Services**

42. To the extent that the allegations of Paragraph 42 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 42 of the Complaint.

43. To the extent that the allegations of Paragraph 43 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 43 of the Complaint.

44. To the extent that the allegations of Paragraph 44 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 44 of the Complaint.

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

**B.**

**Inpatient Acute Rehabilitation Services**

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

47. To the extent that the allegations of Paragraph 47 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 47 of the Complaint.

48. To the extent that the allegations in the final sentence of Paragraph 48 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required to the final sentence of Paragraph 48 of the Complaint, Jefferson admits that the Centers for Medicare & Medicaid Services have requirements for inpatient rehabilitation facilities to obtain certification. Jefferson lacks sufficient knowledge or information to affirm or deny the allegations contained in the fourth sentence of Paragraph 48 of the Complaint, and these allegations are therefore denied. Jefferson denies the remaining allegations of Paragraph 48 of the Complaint, except that Jefferson admits that (a) inpatient rehabilitation facilities provide inpatient rehabilitation services, among other services, and (b) inpatient rehabilitation services are provided in standalone buildings or units housed in larger hospitals providing inpatient GAC hospital services, as well as other locations.

49. To the extent that the allegations of Paragraph 49 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 49 of the Complaint.

**IV.**

**THE RELEVANT GEOGRAPHIC MARKETS**

50. To the extent that the allegations of Paragraph 50 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 50 of the Complaint, and specifically denies that that relevant geographic markets for analyzing an inpatient GAC hospital services market are the “Northern Philadelphia Area” and the “Montgomery Area” and specifically denies that the relevant geographic market for analyzing an inpatient acute rehabilitation services market is the “Philadelphia Area.”

51. To the extent that the allegations of Paragraph 51 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 51 of the Complaint.

**A.**

**Inpatient GAC Hospital Services Geographic Markets**

52. To the extent that the allegations of Paragraph 52 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 52 of the Complaint, and specifically denies the definition of the “Northern Philadelphia Area” and specifically denies that the “Northern Philadelphia Area” is the “main area of competition” between any of Einstein’s and Jefferson’s hospitals.

53. To the extent that the allegations of Paragraph 53 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 53 of the Complaint, and specifically denies the definition of the

“Montgomery Area” and specifically denies that the “Montgomery Area” is the “main area of competition” between any of Einstein’s and Jefferson’s hospitals.

54. To the extent that the allegations in the last sentence of Paragraph 54 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required to the last sentence of Paragraph 54, Jefferson denies these allegations. Jefferson denies the remaining allegations in Paragraph 54 of the Complaint.

55. To the extent that the allegations in the last sentence of Paragraph 55 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required to the last sentence of Paragraph 55, Jefferson denies these allegations. Jefferson denies the remaining allegations in Paragraph 55 of the Complaint.

**B.**

**Inpatient Acute Rehabilitation Services Geographic Market**

56. To the extent that the allegations of Paragraph 56 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 56 of the Complaint, and specifically denies the definition of the “Philadelphia Area” and specifically denies that the “Philadelphia Area” is the “main area of competition” between any of Einstein’s and Jefferson’s inpatient rehabilitation facilities.

57. To the extent that the allegations in the last sentence of Paragraph 57 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required to the last sentence of Paragraph 57, Jefferson denies these allegations. Jefferson denies the remaining allegations in Paragraph 57 of the Complaint.

**V.**

**MARKET STRUCTURE AND THE TRANSACTION'S PRESUMPTIVE ILLEGALITY**

58. To the extent that the allegations of the last two sentences of Paragraph 58 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required to the last two sentences of Paragraph 58, Jefferson denies these allegations. Jefferson denies the remaining allegations contained in Paragraph 58 of the Complaint, except that Jefferson admits that (a) Jefferson and Einstein are among the providers of inpatient GAC hospital services within the greater Philadelphia region, and (b) Jefferson and Einstein are among the providers of inpatient rehabilitation services within the greater Philadelphia region.

59. Jefferson 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 of Paragraph 59 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the remaining allegations of Paragraph 59 of the Complaint.

60. To the extent that the allegations of Paragraph 60 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 60.

61. To the extent that the allegations of Paragraph 61 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 61.

62. To the extent that the allegations of Paragraph 62 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 62.

**VI.**

**ANTICOMPETITIVE EFFECTS**

**A.**

**Competition Between Hospitals Benefits Consumers**

63. Jefferson denies the allegations in Paragraph 63 of the Complaint, except that Jefferson admits that, among other forms of competition, hospital systems seek contracts with commercial insurers and seek to attract patients to their facilities.

64. Jefferson denies the allegations in Paragraph 64 of the Complaint, except that Jefferson 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.

65. Jefferson lacks sufficient knowledge or information to admit or deny the allegations contained in the second sentence of Paragraph 65 of the Complaint, and these allegations are therefore denied. Jefferson denies the remaining allegations contained in Paragraph 65 of the Complaint.

66. Jefferson lacks sufficient knowledge or information to admit or deny the allegations contained in Paragraph 66 of the Complaint, and these allegations are therefore denied.

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

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

69. Jefferson denies the allegations contained in Paragraph 69 of the Complaint.

70. Jefferson denies the allegations contained in Paragraph 70 of the Complaint.

**B.**

**The Transaction Would Eliminate Beneficial Head-to-Head Competition and Increase Bargaining Leverage**

71. Jefferson denies the allegations in the first and last sentences of Paragraph 71 of the Complaint. To the extent that Paragraph 71 purports to describe or quote documents and/or testimony, Jefferson avers that Plaintiffs' selective quotation of unidentified documents and/or testimony, offered without context, is vague and ambiguous as framed and further avers that such documents speak for themselves and, as such, no response is required. To the extent a response is required, Jefferson denies the remaining allegations contained in Paragraph 71 of the Complaint.

72. Jefferson admits that diversion analysis is a mathematical construct that purports to be a method to estimate the extent to which firms providing certain services or products are substitutes. Jefferson denies the remaining allegations contained in Paragraph 72 of the Complaint.

73. Jefferson denies the allegations in the first sentence of Paragraph 73 of the Complaint. To the extent that Paragraph 73 purports to describe or quote documents and/or testimony, Jefferson avers that Plaintiffs' selective quotation of unidentified documents and/or testimony, offered without context, is vague and ambiguous as framed and further avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, Jefferson denies the remaining allegations contained in Paragraph 73 of the Complaint.

74. Jefferson denies the allegations in Paragraph 74 of the Complaint.

75. Jefferson denies the allegations in Paragraph 75 of the Complaint, except that Jefferson admits that (a) Jefferson and Einstein are among the providers of inpatient GAC



hospital services within the greater Philadelphia region, and (b) Jefferson and Einstein are among the providers of inpatient rehabilitation services within the greater Philadelphia region.

76. Jefferson denies the allegations in the first, second, and third sentences of Paragraph 76 of the Complaint. To the extent that Paragraph 76 purports to describe or quote documents and/or testimony, Jefferson avers that Plaintiffs' selective quotation of unidentified and excerpted documents and/or testimony, offered without context, is vague, ambiguous, and grossly misleading as framed. Jefferson further avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, Jefferson denies the remaining allegations contained in Paragraph 76 of the Complaint.

77. Jefferson denies the allegations in Paragraph 77 of the Complaint, except that Jefferson admits that narrow network products may offer fewer participating hospitals at reduced prices relative to other available provider networks, while they may offer hospitals within the network increased volumes of patients and procedures.

78. Jefferson denies the allegations in Paragraph 78 of the Complaint

### C.

#### **The Transaction Would Eliminate Vital Quality and Service Competition**

79. Jefferson denies the allegations in the last sentence of Paragraph 79 of the Complaint as to it. Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in the last sentence of Paragraph 79 of the Complaint, and these allegations are therefore denied. Jefferson denies the remaining allegations contained in Paragraph 79 of the Complaint, except that Jefferson admits that there are a number of different health systems in the greater Philadelphia region that compete with either Jefferson or Einstein.

80. Jefferson denies the first sentence of Paragraph 80 of the Complaint to the extent that it alleges any reduction in the quality of medical care as a result of the Transaction, and Jefferson avers that patients will benefit from the merger of Jefferson and Einstein in the quality of care and services they receive. Jefferson denies the remaining allegations of Paragraph 80 of the Complaint.

**VII.**

**ENTRY BARRIERS**

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

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

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

**VIII.**

**EFFICIENCIES**

84. Jefferson denies the allegations contained in Paragraph 84 of the Complaint. Jefferson avers that the Transaction will result in substantial merger-specific cost-savings and efficiencies.

**IX.**

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

85. Jefferson avers that Paragraph 85 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, Jefferson denies the allegations.

86. Jefferson avers that Paragraph 86 of the Complaint states legal conclusions, and therefore no response is required. To the extent a response is required, Jefferson denies the allegations.

87. Jefferson lacks sufficient knowledge or information to affirm or deny the allegations contained in the first sentence of Paragraph 87 of the Complaint, and these allegations are therefore denied. Jefferson denies the remaining allegations in Paragraph 87 of the Complaint.

88. Jefferson lacks sufficient knowledge or information to affirm or deny the allegations contained in the second sentence of Paragraph 88 of the Complaint, and these allegations are therefore denied. Jefferson denies the remaining allegations in Paragraph 88 of the Complaint.

89. Jefferson denies the allegations in Paragraph 89 the Complaint, and Jefferson avers that the proposed Transaction will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects.

90. Jefferson avers that Paragraph 90 of the Complaint purports to state requests for relief, and therefore no response is required. To the extent a response is required, Jefferson denies the allegations.

#### **JEFFERSON'S AFFIRMATIVE DEFENSES**

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

1. The Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. The alleged relevant service market for inpatient general acute care hospital services fails as a matter of law.
4. The alleged relevant service market for inpatient acute rehabilitation services fails as a matter of law.

5. The alleged relevant geographic markets for inpatient GAC hospital services fail as a matter of law.

6. The alleged relevant geographic market for inpatient acute rehabilitation services fails as a matter of law.

7. The Complaint fails to allege any plausible harm to competition.

8. The Complaint fails to allege any plausible harm to any consumers or to consumer welfare.

9. 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.

10. 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.

11. The combination of Jefferson's and Einstein's hospital systems will be procompetitive, and will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects, all of which will directly benefit patients and consumers throughout the greater Philadelphia region. Jefferson does not concede any of the anticompetitive effects proffered by Plaintiffs; moreover, the foregoing precompetitive benefits are substantial and will greatly outweigh any and all alleged anticompetitive effects.

12. The proposed Transaction is subject to the weakened competitor and/or failing firm defenses. For this reason, among others, the proposed Transaction is procompetitive and will directly benefit patients, including those in the most vulnerable areas of the greater Philadelphia region.

**RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES**

Jefferson 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. Jefferson reserves the right to amend, or seek to amend, its answer or affirmative defenses.

**NOTICE OF CONTEMPLATED RELIEF**

WHEREFORE, Thomas Jefferson University requests that this 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 Plaintiffs;
- C. Costs incurred in defending this action be awarded to Defendants; and
- D. Any and all other relief as this Court may deem just and proper.

Dated: March 19, 2020

Respectfully submitted,

/s/ Paul H. Saint-Antoine

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 19th day of March, 2020, a true and correct copy of the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users in this action.

*/s/ Paul H. Saint-Antoine*

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Paul H. Saint-Antoine