

Complaint

IN THE MATTER OF

**HCA HEALTHCARE, INC.,
STEWARD HEALTH CARE SYSTEM, LLC,
AND
RALPH DE LA TORRE, M.D.**

COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. 9410; File No. 221 0003
Complaint, June 2, 2022 – Decision, June 22, 2022*

This case addresses the \$850 million acquisition by HCA Healthcare, Inc. of certain assets of Steward Health Care System LLC. The complaint alleges that the transaction, if consummated, will violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act by significantly reducing competition in the market for general acute care hospital services in the Wasatch Front region of Utah, which includes Salt Lake City. On June 16, 2022, Complaint Counsel and Respondents HCA Healthcare, Inc. (“HCA”), Steward Health Care System LLC, and Ralph de la Torre, M.D. jointly move to dismiss the complaint as moot following Respondent HCA’s withdrawal of its Hart-Scott-Rodino Notification and Report Form filed for the proposed acquisition. The order dismisses the Complaint.

Participants

For the *Commission*: Guia Dixon, Elizabeth Arens, Stephanie Cummings, Matthew Frank, Christopher Megaw, Jeanne Nichols, Anthony Saunders, Anusha Sunkara, and Jonathan Wright.

For the *Respondents*: Sara Y. Razi, Simpson Thacher & Bartlett LLP; Karen Kazmerzak, Sidley Austin LLP.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“Commission”), having reason to believe that Respondent HCA Healthcare, Inc. (“HCA”) has agreed to acquire the Utah-based assets of Respondent Steward Health Care System, LLC (“Steward”), a limited liability company controlled by Respondent Ralph de la Torre, M.D., in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

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I.**NATURE OF THE CASE**

1. HCA, already owner of six hospitals along Utah's Wasatch Front, seeks to acquire Steward's five hospitals and other assets in the same region (the "Proposed Transaction"). Respondents' transaction violates Section 7 of the Clayton Act, 15 U.S.C. § 18, and should be enjoined because it is likely to lead to higher prices and lower quality. This is not a new story: in 1995, HCA agreed to divest three of the five hospitals it now wants to acquire to avoid an antitrust challenge from the FTC.

2. HCA and Steward are large multi-hospital systems and two of only four large healthcare systems along the Wasatch Front. HCA currently operates eight hospitals in Utah. Six of those hospitals are located in the area running north to south from Weber County to Utah County. Steward currently operates five hospitals in Utah, all of which are located in the same area. HCA's and Steward's geographic footprints significantly overlap. Each of Steward's five Utah hospitals is within an approximately twelve-mile drive of an HCA hospital.

3. HCA and Steward identify each other as close competitors. For example, an HCA executive wanted to [REDACTED] and HCA's Vice President of Strategy and Business Development for the region stated, [REDACTED] [REDACTED] Competition between HCA and Steward has spurred them to reduce the rates they charge insurers, upgrade their facilities, and improve their service offerings.

4. The Proposed Transaction is likely to substantially lessen competition in a relevant service market defined as adult inpatient general acute care ("GAC") hospital services sold and provided to commercial insurers and their members ("inpatient GAC hospital services"). Respondents' inpatient GAC hospitals provide overlapping medical, surgical, and diagnostic services that require an overnight hospital stay. Three relevant geographic markets for evaluating the Proposed Transaction's likely effects on competition are: (1) an area comprising Weber County and northern Davis County (the "Northern Market"); (2) an area comprising Salt Lake County and southern Davis County (the "Central Market"); and (3) an area comprising Utah County (the "Southern Market").

5. The relevant markets are already highly concentrated. There are only four healthcare systems along the Wasatch Front that provide inpatient GAC hospital services: HCA, Steward, Intermountain Healthcare ("Intermountain"), and University of Utah Health. In the Northern and Southern Markets, the Proposed Transaction will reduce the number of healthcare systems offering inpatient GAC hospital services from three to two. In the Central Market, the Proposed Transaction will reduce the number of healthcare systems offering inpatient GAC hospital services from four to three. Under the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"), the Proposed Transaction is

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presumptively unlawful in each of these relevant markets.¹ According to the Merger Guidelines, an acquisition yielding a post-acquisition market concentration level above 2,500 points, as measured by the Herfindahl-Hirschman Index (“HHI”), and an increase in market concentration of more than 200 points establishes a presumption of illegality. Based on inpatient admissions, the Proposed Transaction will significantly increase market concentration levels for inpatient GAC hospital services sold and provided to commercial insurers and their members in each of the relevant geographic markets, in excess of the threshold for presumptive illegality. Even in a broader market comprising Weber, Davis, Salt Lake, and Utah Counties taken together (the “Four County Market”), the Proposed Transaction will reduce the number of healthcare systems offering inpatient GAC hospital services in that market from four to three, and the resulting market concentration still renders the Proposed Transaction presumptively unlawful.

6. Evidence of direct competition between HCA and Steward corroborates the market concentration evidence and further demonstrates the likely anticompetitive effects of the Proposed Transaction. HCA and Steward compete to be included in commercial insurers’ health plan networks. HCA demands and receives significantly higher reimbursement rates than Steward because it currently has substantial bargaining leverage during negotiations with health insurers that offer health plans to employers and individuals. By contrast, Steward offers low- cost healthcare services and innovative contract terms and benefit designs. Competition with HCA has motivated Steward to offer such arrangements. The Proposed Transaction will eliminate Steward as a low-cost provider. As a result, HCA will have greater bargaining leverage, which will allow it to command even higher reimbursement rates. Commercial insurers would pass on at least a portion of those higher healthcare costs to employers and health plan members in the form of increased premiums, deductibles, co-pays, and other out-of-pocket expenses.

7. HCA and Steward also directly compete to provide inpatient GAC hospital services to patients. They routinely track each other’s market shares, quality, and other competitive metrics. HCA and Steward compete on non-price dimensions such as facility improvements and patient experience, and the Proposed Transaction will eliminate this beneficial non-price competition between them.

II.**JURISDICTION**

8. Respondents, and each of their relevant operating entities and parent entities are, and at all relevant times have been, engaged in commerce or in activities affecting “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12.

9. The Proposed Transaction constitutes a transaction subject to Section 7 of the Clayton Act, 15 U.S.C. § 18.

¹ The Merger Guidelines outline the principal analytical techniques, practices, and enforcement policy of the Department of Justice and the FTC with respect to mergers (like the Proposed Transaction) involving competitors.

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III.**RESPONDENTS**

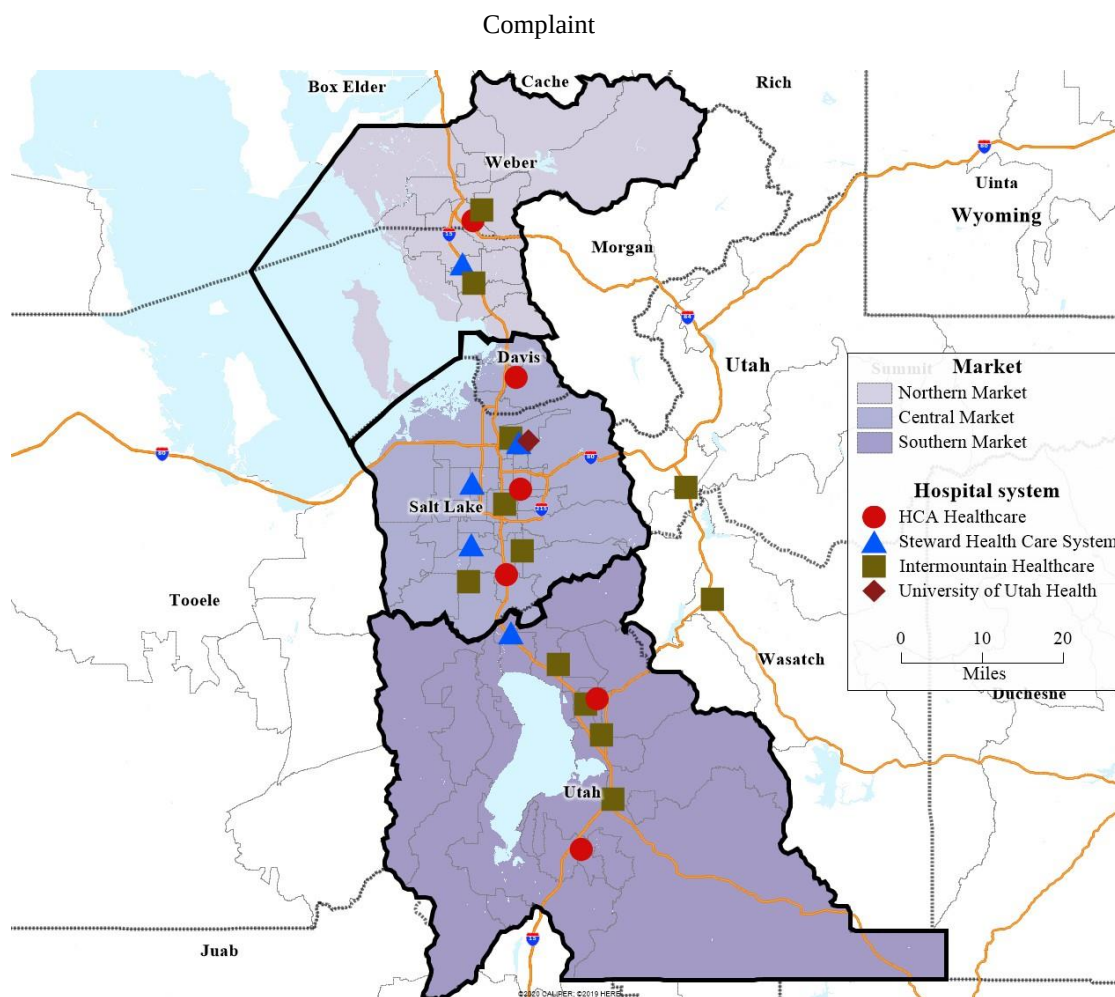
10. Respondent HCA is a for-profit company incorporated under the laws of Delaware, with its principal place of business located at One Park Plaza, Nashville, Tennessee 37203. HCA operates 182 hospitals in the United States and abroad, with revenues totaling approximately \$58.8 billion in fiscal year 2021.

11. HCA is the second largest provider of inpatient GAC hospital services along the Wasatch Front. HCA operates eight inpatient GAC hospitals in Utah under its MountainStar Healthcare division. Six of those hospitals are located in the relevant geographic markets. Ogden Regional Medical Center (located in Weber County) is situated in the Northern Market. St. Mark's Hospital and Lone Peak Hospital (both located in Salt Lake County) and Lakeview Hospital (located in Davis County) are situated in the Central Market. Timpanogos Regional Hospital and Mountain View Hospital (both located in Utah County) are situated in the Southern Market. Combined, HCA's inpatient GAC hospitals in the relevant markets operate approximately 947 beds. In addition to its inpatient GAC hospitals, HCA operates ambulatory surgery centers, outpatient medical imaging centers, free-standing emergency departments, and urgent care centers. HCA employs approximately 104 physicians in the relevant geographic markets.

12. Respondent Steward is a for-profit limited liability company organized under the laws of Delaware, with its principal place of business located at 1900 N Pearl St. #2400, Dallas, Texas 75201. Steward operates forty-one hospitals in the United States and abroad, and its 2020 revenues totaled approximately \$5.4 billion.

13. Steward is the fourth largest provider of inpatient GAC hospital services along the Wasatch Front. Steward operates five hospitals in Utah, all of which are located in the relevant geographic markets. Davis Hospital and Medical Center (located in Davis County) is situated in the Northern Market. Salt Lake Regional Medical Center, Jordan Valley Medical Center, and Jordan Valley Medical Center West Valley Campus (all located in Salt Lake County) are situated in the Central Market. Mountain Point Medical Center (located in Utah County) is situated in the Southern Market. Steward's inpatient GAC hospitals in the relevant markets operate a total of approximately 693 beds. Steward owns one free-standing emergency department and two outpatient medical imaging centers and employs approximately 105 physicians in the relevant geographic markets.

14. The map below shows the three relevant geographic markets for assessing the competitive effects of the Proposed Transaction and the inpatient GAC hospitals located therein.



15. Steward acquired its assets in Utah, including its five inpatient GAC hospitals, from IASIS Healthcare LLC (“IASIS”) in 2017. Three of these hospitals were previously owned by HCA, but were divested to avoid an antitrust challenge. Specifically, in 1995, HCA (then Columbia/HCA Healthcare Corporation) acquired Healthtrust, Inc. – The Hospital Company (“Healthtrust”), whose hospitals included Jordan Valley Medical Center, Jordan Valley Medical Center West Valley Campus (then Pioneer Valley Hospital), Ogden Regional Medical Center, and Lakeview Hospital. In the face of a Commission challenge, HCA agreed to divest Jordan Valley Medical Center and Jordan Valley Medical Center West Valley Campus, along with then- HCA-operated Davis Hospital and Medical Center. Since the Healthtrust transaction, HCA has increased its presence in the relevant markets, including by opening two new hospitals, Timpanogos Regional Hospital in 1998 and Lone Peak Hospital in 2013.

16. Respondent Ralph de la Torre, M.D. is the CEO and majority shareholder of Respondent Steward. Ralph de la Torre, M.D. ultimately controls Steward. His offices are located at 1900 N Pearl St. #2400, Dallas, Texas 75201.

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IV.**THE PROPOSED TRANSACTION**

17. Pursuant to an Asset Purchase Agreement dated September 15, 2021, HCA will acquire from Ralph de la Torre, M.D., Steward's Utah-based facilities, including hospitals, physician clinic operations, and outpatient facilities.

V.**RELEVANT SERVICE MARKET**

18. Inpatient GAC hospital services sold and provided to commercial insurers and their members constitute a relevant service market in which to evaluate the effects of the Proposed Transaction. Inpatient GAC hospital services include a broad cluster of hospital services (including medical, surgical, and diagnostic services) requiring an overnight hospital stay for which competitive conditions are substantially similar. The relevant inpatient GAC hospital services market includes overlapping services that both HCA and Steward sell and provide to commercial insurers and their members through their hospitals in the relevant geographic markets. Non-overlapping services are not included in the relevant service market.

19. Although the Proposed Transaction's likely effect on competition could be analyzed separately for each individual inpatient GAC hospital service, it is appropriate to evaluate the Proposed Transaction's likely effects across the cluster of inpatient GAC hospital services because these services are offered to patients under similar competitive conditions. Thus, grouping the hundreds of individual overlapping inpatient GAC hospital services into a cluster for analytical convenience enables the efficient evaluation of competitive effects without forfeiting the accuracy of the overall analysis.

20. Outpatient services are not included in the inpatient GAC hospital services market because commercial insurers and patients cannot substitute outpatient services for inpatient services in response to a price increase for inpatient GAC hospital services. Additionally, outpatient services are offered by a different set of competitors under different competitive conditions from inpatient GAC hospital services.

21. The inpatient GAC hospital services market does not include services related to psychiatric care, substance abuse, rehabilitation services, or pediatric services (i.e., services provided to patients under the age of eighteen). These services are offered by a different set of competitors under different competitive conditions from—and are not substitutes for—inpatient GAC hospital services.

22. The Proposed Transaction is likely to substantially lessen competition in the market for inpatient GAC hospital services.

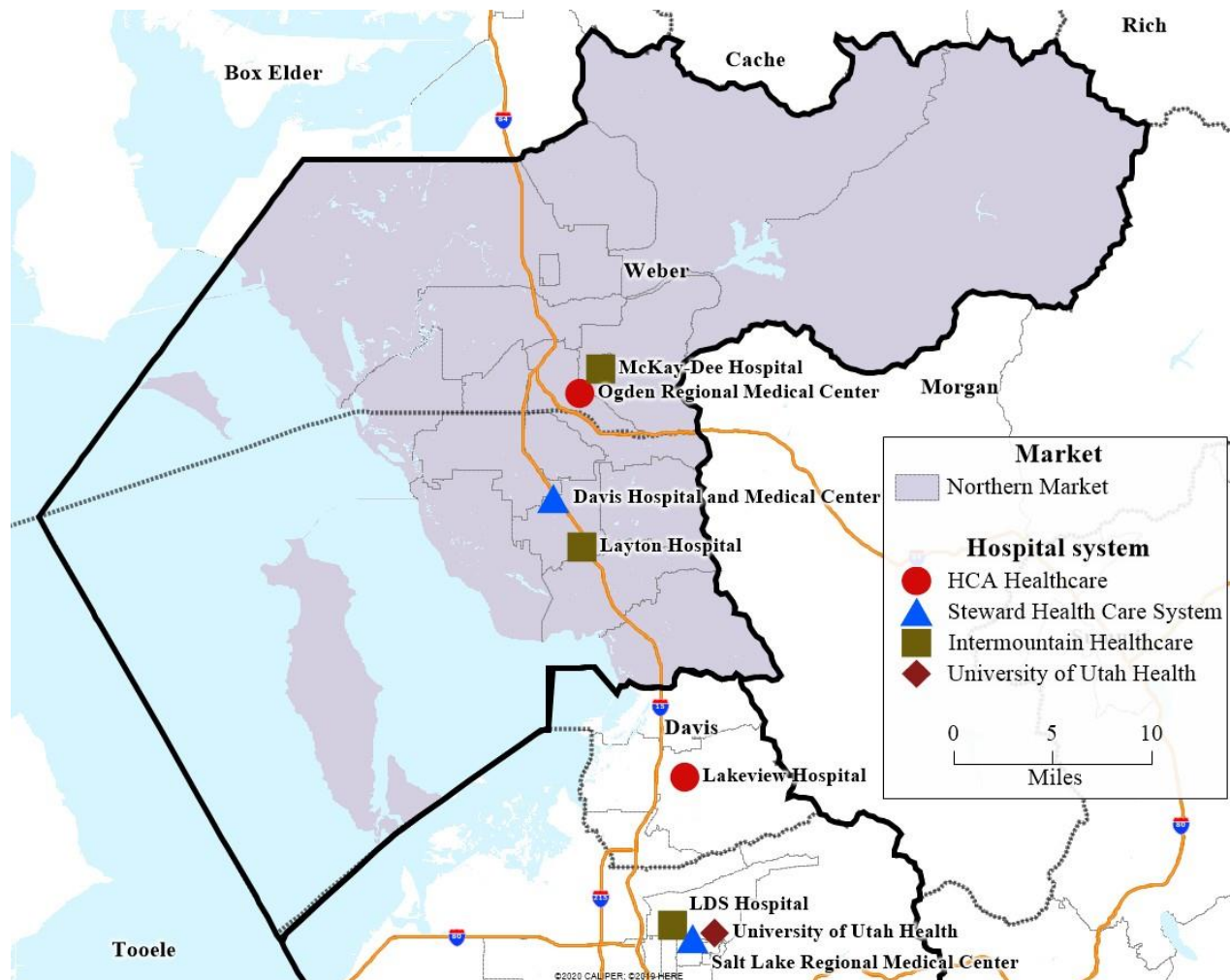
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VI.

RELEVANT GEOGRAPHIC MARKETS

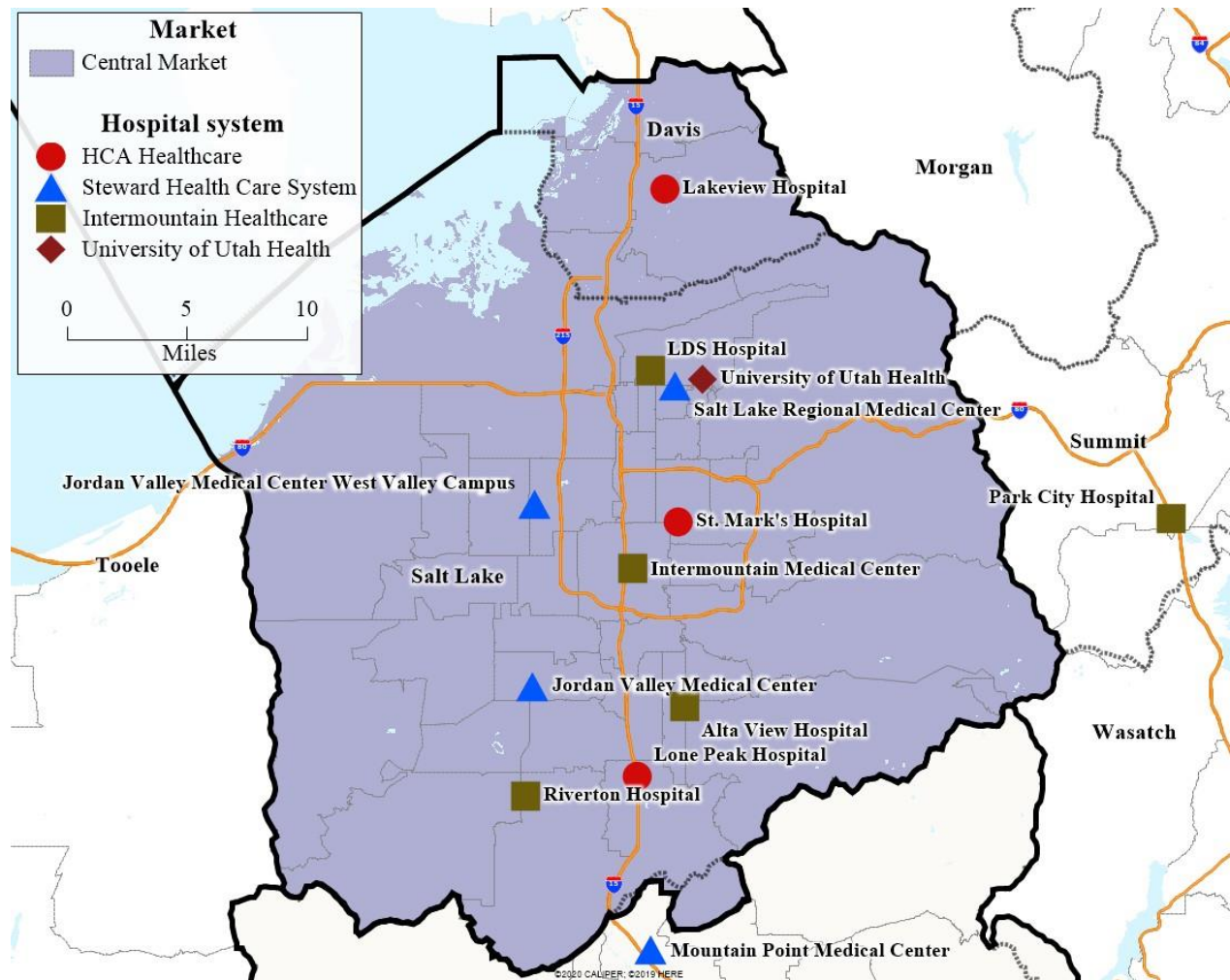
23. The Northern Market, the Central Market, and the Southern Market are relevant geographic markets in which to analyze the Proposed Transaction's effects on competition. HCA and Steward each divide the broader Wasatch Front into distinct regions to evaluate competition. The Wasatch Front is growing in population and approximately eighty percent of Utah's citizens reside there today.

24. The Northern Market comprises Weber County and northern Davis County approximately as far south as Farmington, Utah. HCA's Ogden Regional Medical Center and Steward's Davis Hospital and Medical Center are located in the Northern Market. The map below depicts the Northern Market.



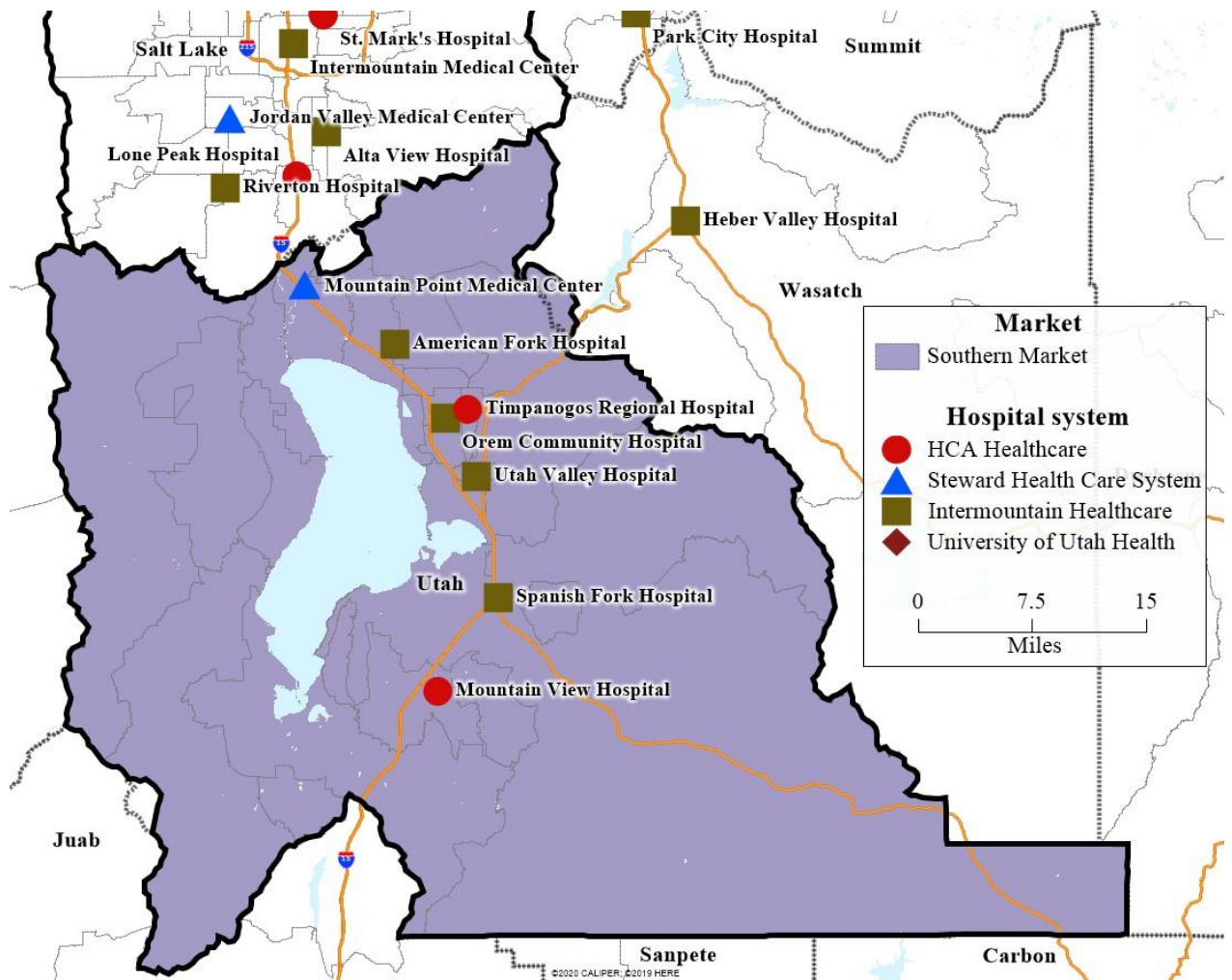
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25. The Central Market comprises Salt Lake County and southern Davis County approximately as far north as Centerville, Utah. HCA's Lakeview Hospital, St. Mark's Hospital, and Lone Peak Hospital and Steward's Salt Lake Regional Medical Center, Jordan Valley Medical Center, and Jordan Valley Medical Center West Valley Campus are located in the Central Market. The map below depicts the Central Market.



26. The Southern Market comprises Utah County. HCA's Timpanogos Regional Hospital and Mountain View Hospital and Steward's Mountain Point Medical Center are located in the Southern Market. The map below depicts the Southern Market.

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27. An appropriate geographic market for analyzing the Proposed Transaction exists where a hypothetical monopolist of the relevant services could profitably impose a small but significant and non-transitory increase in price (“SSNIP”) on the relevant services. If a hypothetical monopolist of the relevant services could profitably impose a SSNIP in a candidate area, that area constitutes a relevant geographic market.

28. Patients who receive inpatient GAC hospital services in the relevant geographic areas strongly prefer to obtain inpatient GAC hospital services close to where they live. As a result, an insurer would face significant difficulty marketing a plan in each area that does not include in its provider network any inpatient GAC hospitals located in that area.

29. A hypothetical monopolist of inpatient GAC hospital services in each relevant geographic area could profitably impose a SSNIP on commercial insurers that sell health plans in that area. Thus, the Northern, Central, and Southern Markets each separately pass the hypothetical monopolist test, and each is a relevant geographic market in which to assess the Proposed Transaction’s effects on competition.

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30. In the alternative—although less illuminative of the competitive effects of the Proposed Transaction—the Four County Market also passes the hypothetical monopolist test and constitutes a relevant geographic market in which to analyze the Proposed Transaction’s effects on competition. A hypothetical monopolist of inpatient GAC hospital services in the entire Four County Market could profitably impose a SSNIP on commercial insurers that sell health plans in the Four County Market.

VII.

MARKET STRUCTURE AND THE PROPOSED TRANSACTION’S PRESUMPTIVE ILLEGALITY

31. The Proposed Transaction is presumed likely to enhance market power in each of the relevant markets because it significantly increases concentration and results in highly concentrated relevant markets. This showing of high market concentration suffices to establish a prima facie case that the Proposed Transaction is unlawful.

32. HHI is a commonly accepted metric for calculating market concentration. The HHI is calculated by summing the squares of individual firms’ market shares. HHI ranges from 10,000 (in the case of a pure monopoly of one firm with 100% market share) to a number approaching zero (in the case of an atomistic market). Under the Merger Guidelines, if a proposed acquisition would result in a post-acquisition market concentration level in a relevant market above 2,500, as measured by HHI, and an increase in market concentration of more than 200, then the acquisition is presumed to enhance market power and is, therefore, presumptively unlawful.

33. As measured by inpatient adult GAC admissions, the Proposed Transaction will result in market concentration levels well above 2,500 points and increases in market concentration greater than 200 points in each of the relevant markets. In the Northern Market, the Proposed Transaction will increase HHIs by more than 750 points to a post-merger HHI of over 4,500 points. In the Central Market, the Proposed Transaction will increase HHIs by more than 300 points to a post-merger HHI of over 3,900 points. In the Southern Market, the Proposed Transaction will increase HHIs by more than 250 points to a post-merger HHI of over 5,800 points.

34. Under the Merger Guidelines and the relevant case law, the Proposed Transaction substantially increases market concentration and is presumed likely to create or enhance market power—and is thus presumptively illegal—in each of these relevant markets.

35. The Northern, Central, and Southern Markets are already highly concentrated. In the Northern and Southern Markets, the Proposed Transaction will reduce the number of healthcare systems offering inpatient GAC hospital services from three to two. In the Central Market, the Proposed Transaction will reduce that number from four to three.

36. Even in a relevant geographic market consisting of the entire Four County Market, the Proposed Transaction also will result in market concentration levels and increases in market concentration significantly above those presumed likely to create or enhance market power. Like the Northern, Central, and Southern Markets, the Four County Market is already highly

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concentrated. In the Four County Market, the Proposed Transaction will increase HHIs by more than 400 points to a post-merger HHI of over 4,400 points. The Proposed Transaction, therefore, is presumptively unlawful even in the Four County Market.

37. Although University of Utah Health currently plans to open a 187-bed hospital in Salt Lake County, that hospital is not expected to open until 2026. Further, once open, the hospital will not significantly impact market concentration levels in the relevant markets.

VIII.

ANTICOMPETITIVE EFFECTS

A.

Competition Between Hospitals Benefits Patients

38. Competition between hospitals occurs in two separate but related stages. First, hospitals compete for inclusion in commercial insurers' health plan provider networks. Second, in-network hospitals compete to attract patients, including commercial insurers' health plan members.

39. In the first stage of hospital competition, hospitals compete to be included in commercial insurers' provider networks. To become an "in-network" provider, a hospital negotiates and enters into a contract with an insurer if the negotiating parties agree on terms. The financial terms under which a hospital is reimbursed for services rendered to a health plan's members are a central component of those negotiations. This is true regardless of whether reimbursements are tied to fee-for-service contracts, value-based contracts, or other types of contracts.

40. Commercial insurers attempt to contract with (and thus bring "in-network") local hospitals (and other healthcare providers) whose services the insurer's current and prospective members demand. An in-network hospital is typically more attractive to the insurer's members because a member usually incurs substantially lower out-of-pocket costs by accessing an in-network, versus an out-of-network, hospital. Hospitals are motivated to offer competitive reimbursement rates to induce the insurer to include the hospital in its network because a hospital will attract more of an insurer's members when it is in-network.

41. Having hospitals in-network is also beneficial to commercial insurers. Insurers strive to create a health plan provider network that will appeal to current and prospective members—typically local employers and their employees—in a given geographic area.

42. A hospital has significant bargaining leverage during negotiations with an insurer if its absence would make the insurer's health plan network substantially less attractive (and therefore less marketable) to its current and prospective members. The attractiveness of a hospital to an insurer depends in significant part on whether nearby hospitals—or a combination of hospitals—could serve as alternatives to the negotiating hospital. The presence of alternative

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competitors that an insurer can turn to limits the bargaining leverage of a hospital in negotiations with the insurer. Where there are fewer meaningful alternatives, a hospital will have greater bargaining leverage to negotiate higher reimbursement rates and other more favorable reimbursement terms.

43. These bargaining dynamics apply to both “broad”- and “narrow”-network health plan negotiations. Narrow-network health plans do not include all area hospitals and are usually marketed at lower prices than health plans that include all area hospitals (i.e., broad-network health plans). Insurers can contain costs using a narrow-network plan because in-network hospitals agree to lower rates or less favorable terms with the expectation that they will obtain a greater portion of patient volume than they otherwise would in a broad-network plan. Hospitals will often give rate and other concessions to insurers to exclude a competing hospital—or hospitals—from the insurer’s narrow-network health plan.

44. A merger between hospitals that are substitutes for some or all services in the eyes of insurers and their members increases the combined entity’s bargaining leverage. Such mergers can lead to higher reimbursement rates and poorer quality by eliminating an available alternative for commercial insurers. Reimbursement rate increases negatively impact insurers’ health plan members. When hospital rates increase, commercial insurers generally pass on a significant portion of those increased rates to their customers—employers, their employees, and individuals—in the form of higher premiums, co-pays, and deductibles.

45. In the second stage of hospital competition, hospitals compete to attract patients. Because patients’ out-of-pocket costs are generally the same for all in-network hospitals, these hospitals seek to attract patients by competing on non-price factors such as patient experience, location, convenience, and quality of care. Hospitals compete on non-price dimensions to attract all patients, regardless of whether they are covered by commercial insurance, have Medicare or Medicaid, or lack any insurance, and thus this competition benefits all patients, not just the commercially insured. A merger of competing hospitals eliminates non-price competition between the hospitals.

B.**The Proposed Transaction Would Eliminate Beneficial Head-to-Head Competition
Between HCA and Steward**

46. HCA and Steward are close competitors. HCA and Steward internal documents demonstrate this head-to-head competition. HCA identifies each of Steward’s Utah hospitals as a competitor to at least one HCA hospital. An email from HCA’s Vice President of Physician and Provider Relations for the region states that [REDACTED]

[REDACTED]
Steward’s internal documents likewise show close competition with HCA. For instance, an email from a Steward Senior Vice President [REDACTED]

[REDACTED]
[REDACTED] HCA and Steward closely track each other’s market shares, quality scores, and strategic initiatives. Today, this close head-to-head competition between HCA and

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Steward incentivizes them to keep prices lower and quality of care higher than they would without this competition.

47. The geographic proximity of the HCA and Steward hospitals results in significant head-to-head competition between them throughout the Wasatch Front. Each of Steward's five Utah hospitals is within an approximately twelve-mile drive of an HCA hospital—and most are much closer. Steward's Salt Lake Regional Medical Center and Jordan Valley Medical Center West Valley Campus are each approximately seven miles by car from HCA's St. Mark's Hospital. Steward's Jordan Valley Medical Center is approximately eight miles by car from HCA's Lone Peak Hospital. Steward's Mountain Point Medical Center is approximately nine miles by car from HCA's Lone Peak Hospital. Steward's Davis Hospital and Medical Center is approximately eleven miles by car from HCA's Ogden Regional Medical Center. Many of HCA's and Steward's hospitals compete with one another because they are geographically proximate and offer many of the same services.

C.

The Proposed Transaction Would Increase HCA's Bargaining Leverage in Negotiations with Insurers

48. The reduction in competition caused by the Proposed Transaction will increase HCA's bargaining leverage in contract negotiations with commercial insurers. This increase in bargaining leverage will apply to contract negotiations for both narrow- and broad-network health plans. Greater bargaining leverage will allow HCA to command higher reimbursement rates at HCA and Steward hospitals, along with other more favorable reimbursement terms, regardless of whether reimbursement is based on fee-for-service contracts, value-based contracts, or another payment mechanism.

49. Competition between HCA and Steward to be in-network providers and to exclude each other from commercial insurance networks directly drives down reimbursement rates in the relevant geographic markets today. HCA and Steward each have provided price concessions to insurers to exclude one another from narrow-network health plans because each system gains inpatient volume when the other is excluded. One email from an HCA executive underscores this direct price competition between HCA and Steward: [REDACTED]

[REDACTED] The Proposed Transaction will eliminate HCA's and Steward's incentives to provide discounts to gain inpatient volume at the other's expense.

50. The Proposed Transaction also will eliminate much of the price constraint placed on Steward today that makes it a low-cost provider of inpatient GAC hospital services. As the fourth largest health system in the region, Steward has been motivated to offer insurers low rates and innovative reimbursement terms to be included in-network. Post-transaction, the combined entity would have little incentive to continue to offer low rates or innovative reimbursement terms for these hospitals.

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D.**The Proposed Transaction Would Eliminate Vital Quality and Service Competition**

51. HCA and Steward compete with one another to attract patients. Competition between HCA and Steward has led them to improve their facilities and services to gain patient volume at the other's expense, as well as to prevent the other from taking patient volume.

52. This competition is particularly fierce with respect to members of the narrow-network health plans in which HCA and Steward participate. Intermountain (the largest healthcare system along the Wasatch Front) typically is excluded from these narrow-network plans. As a result, HCA and Steward often compete more closely with each other than they do with Intermountain for commercial patients. One HCA capital project approval memorandum explains:

[REDACTED]

53. HCA and Steward also compete by recruiting physicians from one another. By aligning physicians around their respective systems, HCA and Steward are better able to steer inpatient volume away from one another and towards their own hospitals. Steward's President of the Western Region put it succinctly: "[p]atients follow physicians." For example, after HCA successfully recruited OB/GYN physicians and orthopedists aligned with Steward, HCA embarked on an approximately \$70 million expansion of its Lone Peak Hospital, expanding Lone Peak's women's services and surgery departments [REDACTED]

[REDACTED]

54. Patients benefit from this direct non-price competition between HCA and Steward. The Proposed Transaction will eliminate HCA's and Steward's incentives to compete to attract patients from one another. As a result, the combined entity will have less incentive to improve quality of care, access to care, technology, patient experience, and service offerings to the detriment of all patients who use these hospitals, including commercially insured, Medicare, Medicaid, and uninsured patients.

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IX.**LACK OF COUNTERVAILING FACTORS****A.****Entry Barriers**

55. Building a new hospital is a multi-million dollar and multi-year effort. Entry by new competitors into the relevant markets will not be timely, likely, or sufficient to counteract the anticompetitive effects of the Proposed Transaction. Expansion by current market participants also is unlikely to deter or counteract the Proposed Transaction's likely harm to competition for inpatient GAC hospital services.

B.**Efficiencies**

56. Respondents have not substantiated merger-specific, verifiable, and cognizable efficiencies that likely would be sufficient to reverse the Proposed Transaction's potential to harm customers in the markets for inpatient GAC hospital services.

X.**VIOLATION****COUNT I – ILLEGAL AGREEMENT**

57. The allegations of Paragraphs 1 through 56 above are incorporated by reference as though fully set forth.

58. The Proposed Transaction constitutes an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

COUNT II – ILLEGAL ACQUISITION

59. The allegations of Paragraphs 1 through 56 above are incorporated by reference as though fully set forth.

60. The Proposed Transaction, if consummated, may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and is an unfair method of competition in violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

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NOTICE

Notice is hereby given to the Respondents that the 13th day of December 2022, at 10:00 a.m., is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

You are notified that the opportunity is afforded you to file with the Commission an answer to this complaint on or before the fourteenth (14th) day after service of it upon you. An answer in which the allegations of the complaint are contested shall contain a concise statement of the facts constituting each ground of defense; and specific admission, denial, or explanation of each fact alleged in the complaint or, if you are without knowledge thereof, a statement to that effect. Allegations of the complaint not thus answered shall be deemed to have been admitted. If you elect not to contest the allegations of fact set forth in the complaint, the answer shall consist of a statement that you admit all of the material facts to be true. Such an answer shall constitute a waiver of hearings as to the facts alleged in the complaint and, together with the complaint, will provide a record basis on which the Commission shall issue a final decision containing appropriate findings and conclusions and a final order disposing of the proceeding. In such answer, you may, however, reserve the right to submit proposed findings and conclusions under Rule 3.46 of the Commission's Rules of Practice for Adjudicative Proceedings.

Failure to file an answer within the time above provided shall be deemed to constitute a waiver of your right to appear and to contest the allegations of the complaint and shall authorize the Commission, without further notice to you, to find the facts to be as alleged in the complaint and to enter a final decision containing appropriate findings and conclusions, and a final order disposing of the proceeding.

The Administrative Law Judge shall hold a prehearing scheduling conference not later than ten (10) days after the Respondents file their answers. Unless otherwise directed by the Administrative Law Judge, the scheduling conference and further proceedings will take place at the Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Room 532, Washington, D.C. 20580. Rule 3.21(a) requires a meeting of the parties' counsel as early as practicable before the pre-hearing scheduling conference (but in any event no later than five (5) days after the Respondents file their answers). Rule 3.31(b) obligates counsel for each party, within five days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

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NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Proposed Transaction challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and/or Section 7 of the Clayton Act, as amended, the Commission may order such relief against Respondents as is supported by the record and is necessary and appropriate, including, but not limited to:

1. A prohibition against any transaction between Respondents that combines their businesses, except as may be approved by the Commission.
2. If the Proposed Transaction is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant markets, with the ability to offer such products and services as HCA and Steward were offering and planning to offer prior to the Proposed Transaction.
3. A requirement that, for a period of time, HCA, Steward, and Ralph de la Torre, M.D. provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.
4. A requirement to file periodic compliance reports with the Commission.
5. Requiring that Respondents' compliance with the order may be monitored at Respondents' expense by an independent monitor, for a term to be determined by the Commission.
6. Any other relief appropriate to correct or remedy the anticompetitive effects of the Proposed Transaction or to restore Steward as a viable, independent competitor in the relevant markets.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this second day of June, 2022.

By the Commission.

Final Order

ORDER DISMISSING COMPLAINT

This matter comes before the Commission on Complaint Counsel's and Respondents' Joint Motion to Dismiss the Complaint. Having considered the motion, it is hereby ORDERED:

The Joint Motion to Dismiss the Complaint, dated June 16, 2022, is GRANTED; and the complaint is DISMISSED without prejudice.

By the Commission.

Complaint

IN THE MATTER OF

**RWJ BARNABAS HEALTH,
AND
SAINT PETER’S HEALTHCARE SYSTEM**

COMPLAINT AND FINAL ORDER IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE
FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

*Docket No. 9409; File No. 201 0145
Complaint, June 2, 2022 – Decision, June 23, 2022*

This case addresses the \$435 million acquisition by Robert Wood Johnson Barnabas Health, Inc. of certain assets of Saint Peter’s Healthcare System, Inc. The complaint alleges that the acquisition, if consummated, will significantly reduce competition in the market for general acute care inpatient hospital services in Middlesex County, New Jersey. Complaint Counsel and Respondents RWJ Barnabas Health, Inc. and Saint Peter’s Healthcare System, Inc. jointly moved to dismiss the complaint as moot after Respondents terminated their Member Substitution and Merger Agreement. The Order dismissed the Complaint.

Participants

For the *Commission*: Ryan Andrews, Emily Blackburn, Alex Bryson, Cory Gordon, Karen Hunt, Ryan Maddock, and Adam Pergament.

For the *Respondents*: Mark Botti, Baker Botts LLP; Bruce Sokler, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act (“FTC Act”), and by virtue of the authority vested in it by the FTC Act, the Federal Trade Commission (“FTC” or “Commission”), having reason to believe that Respondents RWJ Barnabas Health, Inc. (“RWJ”) and Saint Peter’s Healthcare System, Inc. (“Saint Peter’s Healthcare”) have executed a definitive agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. RWJ, one of the largest healthcare systems in New Jersey, seeks to acquire Saint Peter’s Healthcare (the “Acquisition”). Saint Peter’s Healthcare operates an independent hospital located in Middlesex County, Saint Peter’s University Hospital (“Saint Peter’s” or “SPUH”). RWJ’s flagship general acute care (“GAC”) hospital, RWJ University Hospital New Brunswick