

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

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(“RWJ-NB”), and Saint Peter’s are located less than one mile apart in New Brunswick, one of the largest cities in Middlesex County. RWJ-NB and Saint Peter’s are two of the three largest hospitals in Middlesex County and the only two hospitals in New Brunswick.

2. The Acquisition would enhance RWJ’s dominant position in Middlesex County. Post-merger, RWJ would control approximately 50% of the relevant market for inpatient GAC services sold to commercial insurers and their members in Middlesex County. If the Acquisition is completed, only two other competitors would operate hospitals in Middlesex County: Hackensack Meridian Health (“Hackensack”) and Penn Medicine Princeton Medical Center (“Penn-Princeton”), both of which would have significantly smaller market shares than the merged RWJ-Saint Peter’s.

3. The Acquisition would eliminate substantial head-to-head competition between Saint Peter’s and RWJ-NB. [REDACTED]

[REDACTED]. The Acquisition would eliminate this competition, leading to higher healthcare prices and diminished incentives to compete on improving quality, offering new services and technology, and increasing patient satisfaction.

4. RWJ and Saint Peter’s currently compete to be included in insurer health plan networks. [REDACTED]

[REDACTED] RWJ-NB and Saint Peter’s compete with each other for inclusion in health insurance plans. This competition, and insurers’ ability to substitute between Respondents’ hospitals when building health plan networks, allows insurers to negotiate for lower prices and other favorable terms, which, in turn, benefit consumers.

5. If RWJ acquires Saint Peter’s, this competition would disappear and insurers would have fewer alternatives for inpatient GAC services in Middlesex County. RWJ would be able to demand higher rates from insurers for the combined entity’s services, which, in turn, will likely lead to higher insurance premiums, co-pays, deductibles, or other out-of-pocket costs and/or reduced benefits for plan members.

6. RWJ and Saint Peter’s also compete directly for patients by improving quality, service offerings, and facilities. This non-price competition currently benefits Respondents’ patients regardless of whether they are commercially insured, use a government payment program such as Medicaid or Medicare, or are uninsured. [REDACTED]

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[REDACTED]

7. [REDACTED]

[REDACTED]

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 Acquisition constitutes a transaction subject to Section 7 of the Clayton Act, 15 U.S.C § 18.

III.**RESPONDENTS**

10. Respondent RWJ is a New Jersey non-profit corporation that operates one of the largest healthcare systems in New Jersey. It is headquartered in West Orange, New Jersey. In 2021, RWJ reported approximately \$6.6 billion in revenue.

11. RWJ has become one of the largest healthcare systems in New Jersey through a series of acquisitions. In 2016, Barnabas Health and Robert Wood Johnson Health System merged to create RWJ, which then controlled eleven GAC hospitals across central New Jersey. On January 1, 2022, RWJ closed its acquisition of Trinitas Regional Medical Center in Union County. RWJ now operates 12 GAC hospitals, several ambulatory surgical centers, a pediatric rehabilitation hospital, and a freestanding behavioral health center.

12. In Middlesex County, RWJ operates RWJ-NB, its flagship hospital. RWJ-NB has 614 licensed beds and provides inpatient GAC services. RWJ also operates the Bristol Myers Squibb Children’s Hospital, which is a state-designated children’s hospital that operates as a hospital-within-a-hospital on the RWJ-NB campus.

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13. RWJ also operates RWJ University Hospital Somerset (“RWJ-Somerset”), located in Somerset County, adjacent to Middlesex County, approximately eleven miles from RWJ-NB. RWJ-Somerset is a community hospital that provides many inpatient GAC services, but generally refers patients to RWJ-NB for more complex services.

14. Respondent Saint Peter’s Healthcare is a New Jersey non-profit corporation and healthcare system that operates an independent hospital, Saint Peter’s, in Middlesex County. Saint Peter’s Healthcare is headquartered in New Brunswick, New Jersey. Saint Peter’s Healthcare is composed of Saint Peter’s, employed physicians, and other healthcare-related subsidiaries and joint ventures. In 2021, Saint Peter’s Healthcare reported approximately \$579 million in revenue.

15. Saint Peter’s is located in Middlesex County. Saint Peter’s has 478 licensed beds and provides inpatient GAC services. The Children’s Hospital at Saint Peter’s University Hospital is a state-designated children’s hospital that operates as a hospital-within-a-hospital on the Saint Peter’s campus. Saint Peter’s is less than one mile away from RWJ-NB.

IV.

THE ACQUISITION

16. In 2015, Saint Peter’s Healthcare began considering whether to partner with a larger health system. In February 2018, Saint Peter’s Healthcare decided to proceed further and, by November 2018, had issued a Request for Indicative Proposal to 40 entities. Four entities responded to the request, including RWJ. Saint Peter’s Healthcare narrowed its potential merger partners down to RWJ and one other entity before ultimately selecting RWJ.

17. On September 10, 2020, RWJ and Saint Peter’s Healthcare entered into a Member Substitution and Merger Agreement setting forth the terms of the Acquisition.

18. Pursuant to the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, and a modified timing agreement entered into between Respondents and Commission staff, absent this Court’s action, Respondents would be free under federal law to close the Acquisition after 11:59 p.m. EST on June 9, 2022.

V.

RELEVANT MARKET

19. Inpatient GAC services sold to commercial insurers and their members in Middlesex County is a relevant market in which to assess the Acquisition’s effect on competition.

Relevant Product Market

20. Inpatient GAC services sold to commercial insurers and their members is a relevant product market in which to assess the Acquisition’s effect on competition. Inpatient GAC services include a broad cluster of hospital services—medical, surgical, and diagnostic services requiring

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an overnight hospital stay—for which competitive conditions are substantially similar. Here, inpatient GAC services cover all such overlapping services that both RWJ and Saint Peter’s sell to commercial insurers and provide to their members. Non-overlapping services are not included in the relevant product market, as the Acquisition is not likely to affect competition for those services.

21. Although the Acquisition’s likely effects could be analyzed separately for each of the hundreds of individual inpatient GAC services Respondents offer, it is appropriate to assess competitive effects and calculate market concentration for inpatient GAC services as a cluster of services because these services are offered in Middlesex County under substantially similar competitive conditions. Grouping the hundreds of individual inpatient GAC services into a cluster for analytical convenience enables the efficient evaluation of competitive effects and reflects commercial and competitive realities.

22. Outpatient services (i.e., services that do not require an overnight hospital stay) are not included in the inpatient GAC services market because commercial insurers and their members cannot substitute outpatient services for inpatient services in response to a price increase on inpatient GAC services. This is because the decision to administer services on an inpatient or outpatient basis is a medical determination based on each patient’s specific clinical need. Additionally, outpatient services are offered by a different set of competitors under different competitive conditions in Middlesex County.

23. The relevant product market does not include other services that are neither substitutes for, nor offered under similar competitive conditions as, inpatient GAC services. For example, the relevant product market does not include services related to psychiatric care, substance abuse, and rehabilitation services.

24. A hypothetical monopolist of all inpatient GAC services could profitably impose a small but significant and non-transitory increase in the price of those services.

B.

Relevant Geographic Market

25. Middlesex County, New Jersey, is a relevant geographic market in which to evaluate the Acquisition’s effect on competition.

26. Middlesex County is the third-most populous county in New Jersey, with a population of more than 863,000 residents.

27. Middlesex County is an area in that is economically significant to commercial insurers.

28. Patients typically prefer to have access to inpatient GAC services close to where they live. For this reason, an insurer would be unable to sell a health plan successfully in Middlesex County that did not include in its network any Middlesex County GAC hospitals.

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29. Middlesex County is the main area of competition between RWJ and Saint Peter's, and that competition occurs primarily between RWJ-NB and Saint Peter's. RWJ and Saint Peter's each analyze competition for inpatient GAC services within Middlesex County.

30. Insurers offering fully insured commercial plans must meet regulatory requirements that mandate a certain level of geographic access. Insurers could not meet geographic access requirements for marketing commercial plans in Middlesex County if those insurers did not include any Middlesex County hospitals as in-network hospitals in their commercial insurance plans.

31. A hypothetical monopolist of all inpatient GAC services sold to commercial insurers and their members in Middlesex County could profitably impose a small but significant and non-transitory increase in price of those services.

VI.**MARKET CONCENTRATION AND THE ACQUISITION'S
PRESUMPTIVE ILLEGALITY**

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

33. Market concentration within a properly defined antitrust market is a useful indicator of the competitive effects of a merger. The 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines") measure market concentration using the Herfindahl–Hirschman Index ("HHI"). The Merger Guidelines outline the analytical techniques, practices, and enforcement policy of the FTC and Department of Justice with respect to mergers involving competitors. Though the Merger Guidelines are not binding on the courts, courts frequently cite the Merger Guidelines as persuasive authority.

34. The HHI for a given market is calculated by summing the squares of the individual firms' market shares. HHIs range from 10,000 (in the case of a pure monopoly) to a number approaching zero (in the case of an atomistic market). A market HHI above 2,500 is classified as highly concentrated. A merger resulting in a highly concentrated market that increases the HHI by more than 200 points is presumed to enhance market power and is, therefore, presumptively unlawful.

35. The Acquisition will significantly increase market concentration for inpatient GAC services sold to commercial insurers and their members in Middlesex County and is presumed likely to create or enhance market power—and is thus presumptively illegal.

36. The Acquisition will increase HHI levels in the relevant market by more than 900 points to a post-merger HHI of over 3,000 points. The Acquisition will result in a highly concentrated market and is presumed likely to create or enhance market power. As a result, the

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Acquisition, therefore, also is presumptively unlawful under Section 7 of the Clayton Act, 15 U.S.C. § 18.

37. After the Acquisition, RWJ's market share would increase to approximately 50% of the inpatient GAC services sold to commercial insurers and their members in Middlesex County. RWJ's two remaining competitors operating hospitals in the county (Hackensack and Penn-Princeton) would have substantially smaller market shares than the merged firm. The Acquisition would combine two of the three largest hospitals in Middlesex County and reduce the number of GAC hospital competitors in Middlesex County from four to three.

VII.

DIRECT EVIDENCE OF LIKELY ANTICOMPETITIVE EFFECTS

38. In addition to the presumption of harm resulting from the increase in market concentration caused by the Acquisition, there is also direct evidence that the Acquisition is likely to substantially lessen competition in the relevant market. Today, RWJ and Saint Peter's are important competitors to each other. That competition benefits commercial insurers and patients. The Acquisition would eliminate this important head-to-head competition, resulting in likely anticompetitive effects.

39. A merger that eliminates head-to-head competition between close competitors can result in a substantial lessening of competition, including what courts and the Merger Guidelines refer to as "unilateral" anticompetitive effects. A merger is likely to have unilateral anticompetitive effects when it gives the merged firm the incentive to raise price or reduce quality independent of competitive responses from other firms. As described in the Merger Guidelines, unilateral anticompetitive effects are likely when a significant fraction, though not necessarily a majority, of customers of one merging firm consider products or services sold by the other merging firm to be their second choice. A merger of such close substitutes gives the merged entity the incentive and ability to raise the price of (or reduce the quality of) products or services previously sold by one merging firm, because now it will recapture a significant portion of lost business via sales diverted to products or services previously sold by the other merging firm, boosting the profits on the latter products or services.

A.

Competition Among Hospitals Benefits Consumers

40. Hospital competition for commercially insured patients occurs in two distinct but related stages. First, hospitals compete for inclusion in commercial insurers' networks. Second, in-network hospitals compete to attract patients.

41. In the first stage of hospital competition, hospitals compete to be included in commercial insurers' health plan networks. To become an in-network provider in a health plan, a hospital negotiates with an insurer and enters into a contract if it can agree with the insurer on terms. The hospital's reimbursement terms for services rendered to a health plan's members are a

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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.

42. Insurers attempt to contract with local hospitals (and other healthcare providers) that offer services that current or prospective members of the health plan want. In-network hospitals are typically significantly less expensive for health plan members to seek care from than a hospital that is not included in the health plan's network (an "out-of-network provider"). A hospital likely will attract more of a health plan's members when it is in-network. Hospitals, therefore, have an incentive to offer competitive terms and reimbursement rates to induce the insurer to include the hospital in its health plan network.

43. From the insurer's perspective, having hospitals in-network is beneficial because it enables the insurer to create a health plan provider network in a particular geographic area that is attractive to current and prospective members, typically employers and their employees.

44. A hospital has significant bargaining leverage if its absence would make the insurer's health plan network substantially less attractive (and therefore less marketable) to its current and prospective members. This relative attractiveness to the insurer depends largely on whether other nearby hospitals could serve as viable in-network substitutes in the eyes of the plan's members. The presence of alternative, conveniently located, high-quality hospitals is important competition that constrains the ability of hospitals to raise prices and seek other terms adverse to consumers in negotiations with insurers. Where there are fewer meaningful alternatives (i.e., less competition), a hospital will have greater bargaining leverage to demand and obtain higher reimbursement rates and other more onerous contract terms.

45. A merger involving hospitals that are good substitutes for patients increases the combined hospital's bargaining leverage with insurers. Such a merger can lead to higher prices because the merger eliminates an available alternative that an insurer could otherwise offer (or threaten to offer) its health plan members. Increases in reimbursement rates significantly impact insurers' health plan members, such as through higher cost-sharing payments and/or fewer benefits. For fully-insured employers, increased healthcare costs would come in the form of higher premiums. Self-insured employers would fully bear those increased healthcare costs because they pay for claims directly. Individual consumers also could feel the burden of increased costs in the form of higher insurance premiums, co-pays, deductibles, or other out-of-pocket costs.

46. In the second stage of competition, hospitals compete to attract patients to their facilities by offering convenient, high-quality healthcare services. Once patients select a health plan, they generally do not face different out-of-pocket costs to access hospitals included in their commercial health plan network. As a result, in-network hospitals often compete on non-price features, such as location, quality of care, access to services and technology, reputation, physicians and faculty members, amenities, conveniences, and patient satisfaction.

47. Non-price competition to attract patients benefits all patients at the competing hospitals, regardless of whether those patients are covered by commercial insurance, Medicare and Medicaid, or are patients without any insurance. A merger of competing hospitals eliminates these forms of non-price competition between these hospitals.

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B.**The Acquisition Would Eliminate Head-to-Head Competition Between RWJ and Saint Peter's that Currently Benefits Patients and Insurers**

48. Respondents are direct competitors. [REDACTED]

49. In Middlesex County, RWJ-NB and Saint Peter's are close competitors to each other because they sell many of the same services in essentially the same place. RWJ-NB and Saint Peter's are located closer to each other than either is to any other hospital. [REDACTED]

[REDACTED] RWJ-NB and Saint Peter's also are very close substitutes for patients and insurers in terms of service offerings. RWJ-NB offers virtually every inpatient service that Saint Peter's offers.

50. Respondents engage in substantial head-to-head competition for patient volume and insurers' business. [REDACTED]

51. RWJ-NB and Saint Peter's currently serve as important alternatives to one another for insurers constructing networks that include Middlesex County. RWJ-NB and Saint Peter's are two of the three largest hospitals in Middlesex County. RWJ-NB and Saint Peter's are the only hospitals in New Brunswick, one of the largest cities within Middlesex County, and are located less than a mile apart. RWJ-NB and Saint Peter's provide many of the same services.

52. Today, close head-to-head competition between Respondents incentivizes them to keep prices lower and quality of care higher than they would absent this competition. [REDACTED]

53. Quantitative analysis provides direct evidence of the closeness of the competition between RWJ and Saint Peter's. Diversion analysis, an economic tool that measures substitution using data on where patients receive hospital services, shows that if Saint Peter's was to become unavailable to patients for inpatient GAC services, a significant number of those patients would seek care at an RWJ hospital. Likewise, if RWJ-NB was to become unavailable to patients for

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inpatient GAC services, a significant fraction of RWJ-NB's patients would seek care at Saint Peter's.

54. Post-merger, insurers will have fewer, less attractive alternatives to Respondents' hospitals than exist today. Aside from Respondents' GAC hospitals, the only other GAC hospitals in Middlesex County are Penn-Princeton and three hospitals owned by Hackensack. Neither Penn-Princeton nor any of Hackensack's hospitals is located in New Brunswick—all are between 10 and 15 miles outside of the city. This distance makes the Hackensack and Penn-Princeton hospitals less convenient alternatives for many patients and less effective substitutes for insurers than RWJ-NB and Saint Peter's are for each other. As a result, should RWJ acquire Saint Peter's, the merged firm will likely be able to demand higher reimbursement rates and/or more onerous contractual terms than Respondents do separately today, which will harm consumers.

55. RWJ and Saint Peter's also compete with one another to attract patients to utilize their inpatient GAC services, regardless of a patient's insurer. This competition incentivizes RWJ and Saint Peter's to improve quality, technology, amenities, equipment, access to care, and service offerings.

56. [REDACTED]

57. Respondents have invested in their healthcare systems and facilities to compete to attract patients to their Middlesex County hospitals. For example, RWJ and Saint Peter's have each expanded their facilities, hired new specialists, and offered new services to attract patients to their hospitals over their competitors. RWJ is in the process of building a new \$750 million cancer center at RWJ-NB that will add 96 beds to the hospital. In response to each other, Respondents have also made improvements to their facilities and service offerings.

58. All of RWJ-NB's and Saint Peter's patients benefit from this non-price competition. The Acquisition will diminish the combined firm's incentive to compete on these non-price dimensions, including improved and expanded facilities, enhanced quality of care, and improved service offerings—to the detriment of all patients who use these hospitals. [REDACTED]

59. Through the Acquisition, RWJ is attempting to prevent Saint Peter's from competing against RWJ—either as an independent competitor or as a competitor partnered with a different healthcare system. [REDACTED]

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

60. *De novo* entry into inpatient GAC services in Middlesex County will not be timely, likely, or sufficient to counteract the anticompetitive effects of the Acquisition. Expansion by current market participants also is unlikely to deter or counteract the Acquisition's likely harm to competition for inpatient GAC services in Middlesex County.

61. Construction of a new hospital involves high costs and significant financial risks, including the time and resources it would take to develop plans, acquire land or repurpose a facility, garner community support, obtain regulatory approvals, and build and open a facility.

62. In New Jersey, state law requires obtaining a "Certificate of Need" before building a new hospital or expanding an existing hospital. The process of obtaining a Certificate of Need is expensive and time-consuming, and a denial of a Certificate of Need would foreclose a potential competitor's entry or expansion.

B.**Efficiencies**

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

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

1. The allegations of Paragraphs 1 through 63 above are incorporated by reference as though fully set forth.

2. The Acquisition constitutes 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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COUNT II – ILLEGAL ACQUISITION

3. The allegations of Paragraphs 1 through 63 above are incorporated by reference as though fully set forth.

4. The Acquisition, if consummated, may substantially lessen competition in the relevant market 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.

NOTICE

Notice is hereby given to the Respondents that the twenty-ninth day of November, 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

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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 (5) days of receiving the Respondents' answers, to make certain initial disclosures without awaiting a discovery request.

NOTICE OF CONTEMPLATED RELIEF

Should the Commission conclude from the record developed in any adjudicative proceedings in this matter that the Acquisition 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 RWJ and Saint Peter's Healthcare that combines their businesses, except as may be approved by the Commission.
2. If the Acquisition 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 market, with the ability to offer such products and services as RWJ and Saint Peter's Healthcare were offering and planning to offer prior to the Acquisition.
3. A requirement that, for a period of time, RWJ and Saint Peter's Healthcare provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant market with any other company operating in the relevant market.
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 Acquisition or to restore Saint Peter's Healthcare as a viable, independent competitor in the relevant market.

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 and Respondents' Joint Motion to Dismiss Complaint. The Joint Motion states that Respondents have terminated their Member Substitution and Merger Agreement and that Respondent RWJ Barnabas Health, Inc. has withdrawn its Hart-Scott-Rodino Notification and Report Forms filed for the proposed acquisition. Having considered the Joint Motion, we have determined that it should be granted. Accordingly,

IT IS HEREBY ORDERED that the Joint Motion to Dismiss Complaint, dated June 15, 2022, is **GRANTED**, and the Complaint in this proceeding is dismissed without prejudice.

By the Commission.

Complaint

IN THE MATTER OF

**RESIDUAL PUMPKIN ENTITY, LLC,
AND
PLANETART, LLC**CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL
TRADE COMMISSION ACT

*Docket No. C-4768; File No. 192 3209
Complaint, June 23, 2022 – Decision, June 23, 2022*

This consent order addresses Residual Pumpkin Entity, LLC’s data security and privacy practices. The complaint alleges that Respondents violated Section 5(a) of the FTC Act by: (1) misrepresenting the measures CafePress took to protect Personal Information; (2) misrepresenting the steps CafePress took to secure consumer accounts following security incidents; (3) failing to employ reasonable data security practices; (4) misrepresenting how CafePress would use email addresses; (5) misrepresenting CafePress’ adherence to the Privacy Shield frameworks; (6) misrepresenting whether CafePress would honor deletion requests; and (7) unfairly withholding commissions payable to shopkeepers. The consent order prohibits Residual Pumpkin from misrepresenting: (1) privacy and security measures it takes to prevent unauthorized access to Personal Information; (2) the extent to which Residual Pumpkin is a member of any privacy or security program sponsored by a government, self-regulatory, or standard-setting organization; (3) privacy and security measures to honor users’ privacy choices; (4) information deletion and retention practices; and (5) the extent to which it maintains and protects the privacy, security, availability, confidentiality, or integrity of Personal Information. The order also requires Residual Pumpkin to establish and implement, and thereafter maintain, a comprehensive information security program that protects the privacy, security, confidentiality, and integrity of Personal Information.

Participants

For the *Commission*: M. Hasan Aijaz and Matthew Wilshire.

For the *Respondent*: Jennifer Everett and Kerianne Tobitsch, Jones Day.

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The Federal Trade Commission, having reason to believe that Residual Pumpkin Entity, LLC, a limited liability company, and PlanetArt, LLC, a limited liability company (collectively, “Respondents”), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent Residual Pumpkin Entity, LLC (“Residual Pumpkin”), also formerly doing business as CafePress, is a Delaware limited liability company with its principal office or place of business at 11909 Shelbyville Road, Louisville, Kentucky 40243.

2. Respondent PlanetArt, LLC (“PlanetArt”), also doing business as CafePress, is a Delaware limited liability company with its principal office or place of business at 23801 Calabasas Road, Suite 2005, Calabasas, California 91302.