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UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

IN THE MATTER OF PROPOSED ACQUISITION BY THE HOSPITAL AUTHORITY OF ALBANY-DOUGHERTY COUNTY OF PALMYRA PARK MEDICAL CENTER, INC. FROM HCA INC.	)	File No. 111-0067

HCA INC.'S PETITION TO QUASH OR LIMIT
SUBPOENA *DUCES TECUM* AND CIVIL INVESTIGATIVE DEMAND

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Pursuant to Section 2.7(d)(1) of the Federal Trade Commission's ("FTC" or "Commission") Rules of Practice, 16 C.F.R. § 2.7(d)(1), and Section 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 57b-1(f)(1), HCA Inc. ("HCA" or "the Company") hereby files its Petition to Quash or Limit the Civil Investigative Demand (the "CID") and Subpoena *Duces Tecum* (the "Subpoena"), FTC File No. 111-0067, served on HCA on February 15, 2011 (collectively referred to as the "Compulsory Requests" or the "Requests").

PRELIMINARY STATEMENT

The Compulsory Requests issued pursuant to the FTC's investigation (the "Investigation") of The Hospital Authority of Albany-Dougherty County's (the "Hospital Authority") proposed acquisition of Palmyra Park Hospital, Inc. ("Palmyra") from HCA (the "Transaction") command HCA to achieve the impossible. Complying with the FTC's broad and detailed CID and Subpoena within a highly compressed two-week time frame is simply not achievable. Indeed, the Compulsory Requests are broader and more burdensome than a typical Second Request, which generally takes parties from three to six months to complete. FTC Staff attorneys ("Staff") are standing firm on their demand for full compliance within two weeks. As a result of this position, HCA hereby petitions to quash or alternatively to limit these demands.

The Compulsory Requests are made in connection with a Transaction that the FTC is aware may, under existing law, be exempt from federal antitrust scrutiny under the state action doctrine. Indeed, when confronted with the fact pattern at issue here -- i.e., where a political subdivision is engaging in conduct that has been statutorily authorized by the state, the 11th Circuit has consistently and uniformly held that state action immunity applies and the conduct and/or transaction is exempt from federal antitrust scrutiny. *See Crosby v. Hospital Auth. of Valdosta & Lowndes County*, 93 F.3d 1515 (11th Cir. 1996); *F.T.C. v. Hospital Bd. of Directors*

of Lee County, 38 F.3d 1184 (11th Cir. 1994); *Askew v. DCH Reg'l Health Care Auth.*, 995 F.2d 1033 (11th Cir. 1993).

No one has contested that this dispositive legal question, if settled in HCA's favor, would moot any substantive examination of the Transaction. The FTC is nonetheless requiring HCA to review what might equate to millions of pages of documents in order to locate and produce documents relevant to the substantive antitrust aspects of the Transaction. Given that these documents and issues may never come to play, the enormous burden, consumption of time and expense that will be incurred in responding to the CID and Subpoena are all the more unreasonable.

Recognizing the FTC Staff's desire to examine the antitrust aspects of this matter co-extensive with its review of the state action issues, HCA and the other parties have made and continue to make significant efforts and concessions in a good faith effort to cooperate with the FTC. That extension of cooperation includes HCA's agreements to delay the closing of the Transaction from January 31 (on which day the parties originally intended to close) to March 1, and then again to March 31.[1] In addition, HCA voluntarily committed to make every effort to satisfy an informal voluntary information request from Staff on February 4, 2011 (the "Voluntary Request") seeking certain data and information on the substantive antitrust aspects of this Transaction by February 28, 2011.[2]

Further, in its efforts to comply with the FTC's Voluntary Request (which provided only a three and a half week time frame) as soon as possible, HCA and outside counsel immediately devoted significant resources to the task, both interviewing HCA employees and gathering

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1 The parties have voluntarily moved the closing date back in an effort to cooperate, despite the fact that delays in the anticipated closing is disruptive, leaving the hospitals and hospital employees in question in limbo, and having financial and other implications for the business.

2 Attached at Exhibit A.

relevant materials for production. After HCA had already gathered a substantial volume of material potentially responsive to the Voluntary Request and was in the midst of reviewing these materials for production, without any advance communication, the FTC subsequently served HCA with the Compulsory Requests at issue here. Received on February 15, 2011, the Compulsory Requests call for a far broader range of documents, data and information (and in some instances a larger date range) than does the Voluntary Request—yet still mandate the same February 28, 2011 return date. Due to the greater breadth of the Compulsory Requests, its various document and data demands are largely not cumulative. In essence, the efforts undertaken to prepare and collect responsive materials to the Voluntary Request must largely be duplicated to respond to the Compulsory Requests.

Even a cursory review of these Compulsory Requests reveals their breadth. The CID and Subpoena include over 130 requests ("Specifications") (including subparts), calling for HCA's collection, review, processing and production of hundreds of thousands (and possibly millions) of pages of information, documents and data. Indeed, some of the requested information dates from over seven years ago. It is a physical and technical impossibility to comply with such broad Requests in a two-week period.

Upon receipt of the Compulsory Requests, counsel for HCA contacted Staff to discuss the impossibility of complying with the Requests in a two-week time frame and proposed both modifications and an alternative return date of March 15, 2011. Although this revised return date would still present enormous challenges to meet, counsel for HCA put forth this proposal in an effort to cooperate and use best efforts to comply, while still getting materials to the FTC in a timely manner. HCA also assured Staff that as much as possible, some of the documents called for in the Subpoena and some of the data called for in the CID, would be produced to the FTC by February 28. In addition, HCA agreed that the materials would be produced on a rolling basis

during that time. On February 22, 2011, while verbally agreeing to a number of modifications to limit the Compulsory Requests, the FTC denied HCA's request for any additional time to comply.[3] Thereafter, Staff denied the request in writing,[4] forcing HCA to file this Petition to Quash or Limit the Subpoena and CID.

FACTUAL BACKGROUND

A. The Transaction

Palmyra is a general acute care hospital located in the city of Albany in Dougherty County, Georgia that is indirectly owned by HCA. It offers a standard range of services, including surgery, oncology, pulmonary care and emergency medicine, among others, to residents of a multi-county region of southwestern Georgia.

On December 21, 2010, HCA entered an Asset Purchase Agreement ("APA") for the sale of Palmyra to the Hospital Authority. On the same day, in accordance with the Georgia Hospital Authority Law, the Hospital Authority passed resolutions (the "Resolutions") authorizing the purchase of Palmyra's assets, as well as authorizing a lease of the Palmyra assets to Phoebe Putney Memorial Hospital, Inc. ("PPMH") at some point after the transaction has completed. PPMH operates the Phoebe Putney Memorial Hospital ("Phoebe Putney"), a full service general acute care facility located in Albany and owned by the Hospital Authority.[5] Phoebe Putney has been operating at full capacity and looking for ways in which to expand to meet demand. HCA understands that the Hospital Authority determined that an acquisition of Palmyra would be a more efficient option for expansion of Phoebe Putney than building additional facilities or

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3 With the single exception of allowing two extra weeks for the production of data from years 2006 and 2007 due to the inaccessibility of the relevant data (as discussed in Section A.2).

4 *See* Letter from Goldie V. Walker to Jennifer Rie dated February 24, 2010, attached at Exhibit B.

5 Phoebe Putney is owned by the Hospital Authority, but leased to PPMH, which is a Georgia non-profit corporation created by the Hospital Authority in 1990. PPMH is a wholly-owned subsidiary of Phoebe Putney Health System, Inc. ("PPHS"), which was also formed by the Hospital Authority in 1990.

acquiring other facilities, and that the acquisition would provide efficiencies and economies of scale that would result in better health care at a lower cost.

Because the Hospital Authority is organized and exists pursuant to the Hospital Authorities Law and is a political subdivision of the state of Georgia, the parties were not required to file Hart-Scott-Rodino ("HSR") notifications under Section 7A of the Clayton Act. 15 U.S.C. § 18a. Transfers to or from a federal agency or state political subdivision are exempt from the requirements of that statute. 16 C.F.R. § 801.1(a)(2). Likewise, the acquisition is not subject to the HSR filing requirements as described in Section 801.1(a)(2) of the regulations promulgated under the HSR Act, which states, "the term 'entity' shall not include...the United States, any of the States thereof, or any political subdivision or agency of either (other than a corporation engaged in commerce)."

B. The FTC Investigation

On December 29, 2010, eight days after the parties signed the APA but before any consummation by the parties, the FTC informed HCA by letter that the Bureau of Competition was conducting a non-public investigation of the Transaction. The stated purpose of the Investigation was to "determine whether the acquisition may be anticompetitive, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, or Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45." The FTC also indicated that it was investigating whether pre-merger notification requirements, as required under Section 7A of the Clayton Act, "have been or will be satisfied in connection [sic] this acquisition." The FTC requested that HCA produce certain requested materials on a voluntary basis, meant to "resolve potentially dispositive issues" and help determine whether a full-scale investigation would be needed. HCA understood that PPHS received a similar letter and intended to produce materials to the FTC relevant to the parties' claim that the acquisition is immune from federal antitrust scrutiny

because it is exempt under the state action doctrine. As HCA is not the party in possession of materials relevant to the state action question, it deferred to PPMH for production of relevant materials. The FTC also asked that the parties refrain from closing the Transaction before March 1, 2011 or no sooner than 45 days from the date on which both parties had provided all of the requested information to the FTC.

About a week later, counsel for PPHS contacted FTC Staff and requested a meeting to discuss the Hospital Authority's legal position that the transaction was exempt from federal antitrust scrutiny due to state action immunity. A meeting was scheduled for January 14. The day after the meeting request, January 6, 2011, counsel for the parties together spoke with FTC Staff by phone and assured the FTC that they would not consummate the Transaction before March 1, 2011.

Thereafter, on January 10, 2011, via email, the FTC Staff acknowledged that the presentation to the FTC scheduled for January 14 would be limited to a discussion of the "state action issues." In addition, Staff's email highlighted certain requests from the FTC's December 29 letter that called for material or information that, in the Staff's view, is relevant to the state action discussion. In response, on January 13, counsel for the PPHS informed Staff, via email, that the APA and Resolutions would be provided to the FTC that day in order to facilitate a robust discussion at the January 14 meeting.

Counsel for all of the involved parties met with the FTC on January 14, 2011 and gave a thorough and detailed presentation regarding the applicability of the state action immunity defense to the Transaction. Several days later, in January 18, 2011 letters to counsel for HCA and to counsel for PPHS and for the Hospital Authority, the FTC expressed its view that the presentation was "very helpful" to its Investigation and that the state action immunity defense

could be a dispositive issue in the case and thus required the FTC Staff's "full attention."[6] The letter to counsel for PPHS also requested specific "supplemental material" relating specifically to the state action doctrine. The Staff again sought a written commitment that the parties not close the Transaction until 45 days after its receipt of all requested materials.

Counsel for the Hospital Authority spoke with Staff again on January 20, 2011 and assured the Staff that the Staff would receive all documents relevant to the state action immunity issue as soon as possible. The FTC provided assurances that it was giving its full attention to the state action issue and told counsel that it would close the Investigation if it was persuaded that state action immunity applied. HCA understands that the Hospital Authority thereafter produced essentially all of the requested state action documents, as well as some documents relevant to a substantive antitrust analysis.[7]

On January 24, 2011, Staff sought a further extension of the Transaction's closing date beyond March 1, 2011. In response to the request, the Hospital Authority once again requested that Staff review the materials it had provided on the state action immunity defense, prior to requesting another extension, because the issue could be dispositive.

Despite the ongoing nature of these discussions, on February 3, 2011 the Staff informed the parties by letter that it had converted the Investigation to "full phase" and refused to prioritize its inquiry by first looking at the potentially dispositive state action issues. Thus, counsel for the Hospital Authority immediately contacted the FTC on behalf of the parties to discuss what assistance could be provided to expedite the Commission's substantive antitrust review. In response, on February 4, 2011, the FTC sent the Voluntary Request letter to HCA, identifying

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6 Attached at Exhibit C.

7 The productions included Board minutes and attachments, documents related to the transaction, community benefit reports, audits and attachments, consultant reports, and other documents.

several categories of documents that it would need in order to conduct its substantive investigation, and asked that the information be produced no later than February 28, 2011.

In a telephone conference with the FTC Staff on or about February 8, HCA agreed to produce the materials requested by the Voluntary Request and make every effort to do so by February 28, 2011. At the same time, HCA and the other parties indicated to the FTC that they would agree to another postponement of the closing date of the Transaction and refrain from closing before March 31, 2011.

HCA then acted swiftly to identify personnel within the Company and at Palmyra who could have relevant documents. The files of ten HCA employees were immediately searched, including personnel from HCA's corporate headquarters, its Eastern group, its North Florida Division and at Palmyra. Likewise, HCA immediately began the compilation of the requested data and information. At the same time, HCA retained electronic discovery experts to expedite processing documents, establish an online electronic document review tool, and produce documents in a manner consistent with the FTC's technical requirements.

As of February 15, HCA was on schedule to comply with the Voluntary Request by February 28.

C. The Subpoena and CID

While HCA was making every conceivable effort to produce documents responsive to the Voluntary Request, on February 15, the Commission served Compulsory Requests on HCA.[8] The CID and Subpoena are broad and exhaustive. They exponentially expand the scope of production initially sought by the Voluntary Request and call for responses to an aggregate of

[8] Although the Compulsory Requests are dated February 14, 2011, counsel for HCA received them in draft form well after business hours were over on February 14, 2011, and did not receive the final versions of the Compulsory Requests until February 15.

131 Specifications (counting subparts), including documents, data, information and narrative responses, by February 28, 2011, a mere two weeks from the date of service and including a federal holiday.[9] Even where the Compulsory Requests duplicate the Voluntary Request, they do so in an imperfect manner, altering the date range of the request or expanding the request enough so that the previous document collection efforts of HCA are insufficient and HCA is forced to re-trace all of its previous steps and disrupt HCA's operations and personnel for a second time in one week.

The Compulsory Requests came as a surprise because HCA had agreed with Staff that it would make every effort to comply with the Voluntary Request in a timely manner and believed an understanding had been reached with the FTC that formal process would not be issued, at least until the voluntary production was received and evaluated. Counsel for HCA immediately began re-interviewing personnel and collecting potentially responsive materials. At the same time, aware that this task was overwhelming and simply impossible to complete in two weeks, counsel for HCA contacted the FTC to request modifications of the Compulsory Requests and an extension of the compliance period to March 15, 2011.[10] Counsel for HCA indicated that production of the data and documents called for by the Compulsory Requests prior to March 15 was simply a physical and technical impossibility.[11]

While the FTC Staff responded quickly to HCA's requests, and verbally agreed to certain modifications sought by counsel for HCA, they did not agree to move the return date to March 15, 2011, absent a third, further extension for closing. At the present time, HCA and Palmyra are

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9 The CID and Subpoena are attached at Exhibit D and E.

10 Even completion with the Subpoena and CID by March 15, 2011 would require enormous effort and cannot be done in the normal course – it will require an extraordinary "full court press" and the addition of substantial outside resources, both in terms of personnel and expense.

11 Letter to Goldie V. Walker from Jennifer Rie, dated February 22, attached at Exhibit F.

doing everything possible to produce non-privileged documents and information responsive to the Voluntary Request of February 4, as well as the Compulsory Requests, by the designated return dates. As demonstrated below, however, the volume of the information requested, the nature of the information requested, the extremely short time frame provided, and the large size and scope of HCA's operations (even relating to Palmyra alone) dictate that the February 28 deadline cannot be fully met.

ARGUMENT

Pursuant to its investigations under the FTC Act, the FTC is authorized to issue subpoenas *duces tecum* to require the production of documentary evidence, 15 U.S.C. § 49, and to issue civil investigative demands to require the production of documents and other information. 15 U.S.C. § 57b-1. However, compulsory process issued by the FTC is not self-executing and the FTC must petition a district court of the United States to seek enforcement of a subpoena or Civil Investigative Demand. *See D.R. Horton, Inc. v. Leibowitz,* No. 4:10-CV-547-A, 2010 WL 4630210, at *2 (N.D. Tex. Nov. 3, 2010).[12] A federal agency's use of compulsory process is enforceable in court only when the "disclosure sought [is not] unreasonable." *Oklahoma Press Publ'g Co. v. Walling*, 327 U.S. 186, 208 (1946). In turn, compulsory process is reasonable and thus enforceable where the requests are "reasonably relevant [to the federal agency's investigation] . . . and not unduly burdensome to produce." *F.T.C. v. Invention Submission Corp.*, 965 F.2d 1086, 1089 (D.C. Cir. 1992) (internal quotation marks and citations omitted).

The CID and Subpoena should be quashed or the return date moved because, as discussed below, the Compulsory Requests are unduly burdensome and overly broad. Further, HCA's

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[12] *See also SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1024 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) ("The federal courts stand guard... against abuses of [federal agencies'] subpoena-enforcement processes . . .) (internal citations omitted).

attempts to comply with the Requests would impede its normal business operations and impose a significant and unjustifiable expense on the Company.

A. The Subpoena and CID Impose an Undue Burden on HCA Because the Time Period Allotted for Compliance Is Unachievable

As noted above, the broad scope and impossibly compressed time frame render compliance by February 28 unrealistic. The Subpoena's 44 document requests (including subparts), require that HCA collect documents going back as far as seven years from at least 13-15 HCA custodians from three to four different levels and divisions within the Company and at multiple locations. The CID is comprised of over 85 different data requests, including subparts, many of which call for data going back over five years. In fact, as discussed below, the CID seeks a volume of information that greatly exceeds that which the FTC deems necessary in seeking an injunction to restrain the closing of a proposed acquisition.[13]

The FTC has recognized that an "abbreviated schedule insisted upon" by the issuer of requests for information may be "the source of the undue burden" on the recipient of such requests. Pl.'s F.T.C.'s Opp'n to Defs.' Mot. to Compel at 9, *FTC v. Western Refining, Inc.*, No. 1:07-CV-00352-JB-ACT (D.N.M. May 2, 2007) (hereinafter "*Western Refining.*").[14] Further, the FTC's Rules of Practice for Non-Adjudicative Proceedings require that Civil Investigative Demands provide a return date for compliance that provides the party served with "a reasonable

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[13] *See* 16 C.F.R. § 3.35 (as discussed in Section A.2). Furthermore, the breadth of these two documents combined exceeds the scope of a typical Second Request issued by the FTC when investigating transactions that fall within the notification requirements of the Hart-Scott-Rodino Act. In most typical cases, parties generally take from 12 to 20 weeks or more to comply with a Second Request, and even this time frame cannot generally be achieved without a full-court press undertaken at enormous expense.

[14] In this case, the defendants filed a motion to compel one week after FTC's responses to document requests were due and three days after the FTC's responses to interrogatories were due, giving the FTC four days to comply with the request after a ruling on the defendants' motion before the scheduled preliminary injunction hearing. *See Pl.'s Opp'n* at 9. The FTC argued in *Western Refining* that its production of approximately 876,000 documents in four days was an "impossible burden" to meet. *See Pl.'s Opp'n* at 11. In contrast, in this case, HCA had no advance knowledge of any compulsory process requests before the abbreviated period for compliance was imposed.

period of time within which the material so demanded may be assembled." 16 C.F.R. § 2.7(b)(1). In this instance, the 13-day compliance period is not only unreasonable, it is impossible.

Finally, the FTC's Operating Manual states that compulsory process "should be used in such matters only where the needed information cannot be obtained voluntarily. *F.T.C. Operating Manual* ¶ .3.6.7.5.1. HCA had agreed with the FTC to make every effort to produce materials relevant to the antitrust analysis of this matter that were requested in the FTC's Voluntary Request of February 4 by the stated return date of February 28, 2011. Given HCA's efforts to make a comprehensive voluntary production of documents responsive to the Voluntary Request, issuance of the Compulsory Requests was unwarranted, improper and imposes an undue burden.

1. It is Unduly Burdensome to Provide Only Two Weeks to Comply with the Subpoena

Although HCA began the document collection process immediately upon receipt of the Subpoena, production of these materials cannot be completed by February 28. The Subpoena contains 17 Specifications (44 counting subparts), that date back over a period of three years or longer and will require searching for, processing and reviewing an enormous volume of documents. Responding to a subpoena of this scope usually require certain steps which cannot be circumvented or condensed:

1) Counsel must typically spend one to two business days reviewing the document requests and identifying potential custodians of responsive documents.

2) Counsel must travel (usually to more than one location) to interview company representatives, potential document custodians and information technology specialists to confirm where and how to extract potentially responsive documents.

3) Counsel must establish a document collection and review process, which requires at least two business days, to apply the appropriate date restrictions to the

materials, de-duplicate documents, capture metadata and prepare the electronic document review platform.

4) Counsel must train and supervise the attorneys conducting the document review to ensure that it is being performed correctly.

5) The electronic discovery vendor must process documents identified by counsel as responsive and create a production that meets the FTC's electronic production guidelines.

Depending on the volume of documents collected, the document review process can take anywhere from four to eight weeks. Once this review is complete, it takes at least four business days for an electronic discovery vendor to generate the production. In all, this process takes many weeks if not months to complete.

Further, HCA is a large company with personnel in multiple groups and areas bearing some responsibility for the activities related to Palmyra, this Transaction and/or the information requests in the Subpoena. In fact, counsel for HCA had already identified personnel at four levels of HCA' s corporate structure—at the HCA corporate level, the Eastern Group level, the North Florida Division level, and at the hospital level—who could potentially have documents responsive to the Voluntary Request (which, again, is far narrower than the Subpoena). The Subpoena will certainly require that each of those custodians be interviewed a second time, as well as necessitate additional investigational interviews of additional personnel at all four levels of the Company, to understand whether or not any additional custodians must be searched for potentially responsive documents. Similar subpoenas have required the collection of hundreds of thousands of documents, and since an average document is usually at least six pages in length, it is not unusual to review several million pages of documents in order to respond to a subpoena of this breadth and depth.

in an effort to move the review process of these

documents as quickly as possible. But even if these personnel and outside counsel work around the clock, the technical aspects of the review, such as processing time, the pace of the computers and servers being used, and other technical aspects of electronic discovery, dictate a minimum number of hours to complete such a review.[15] Collecting, reviewing, coding and processing this volume of documents simply cannot be completed in two weeks.

A first review of the anticipated hundreds of thousands of documents collected would require several thousand hours of review by the dozens of contract attorneys currently working on this matter over a two week period. An additional 400 hours would then be needed for a quality-control review of these documents. HCA's outside counsel must also spend approximately 300 hours overseeing the review and production process. Finally, once the document review is complete, the electronic discovery vendor needs ***at least*** three to four days to prepare the documents for production in a format that complies with the Commission's production guidelines. Rolling productions, where several load files have to be created per the FTC's technical specifications, adds additional time and expense.[16] By our estimation, and based on previous experience, the total timeline for review and production of HCA's documents in response to the Subpoena is, at the absolute minimum, ***26 days***, and this very much represents a best case scenario. This is twice the amount of time that the FTC has provided for compliance.

2. It is Unduly Burdensome to Provide Only Two Weeks to Comply with the CID

Like the Subpoena, the CID issued to HCA imposes an undue burden— it is overly broad and has the same impossibly short time line as the Subpoena. The FTC seeks a tremendous

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[15] Indeed, as described below,

. This demonstrates but one technical difficulty in complying with the existing return date.

[16] In its efforts to cooperate with the FTC, HCA has already begun a rolling production of relevant documents to the FTC.

amount of information and data in an abbreviated period of time—counting subparts, the CID includes 87 specific requests for data and information, many of which call for over five years of data, dating back to January 2006. The FTC's Rules of Practice for Adjudicative Proceedings provide that any party in an administrative hearing "may serve upon any other party written interrogatories, not exceeding twenty-five (25) in number, including all discrete subparts . . . ." 16 C.F.R. § 3.35(a). While this proceeding is a non-adjudicative investigation, if 25 requests are deemed sufficient for litigation purposes, it is difficult to understand why 87 requests are reasonable in the review of this Transaction.

Certain Specifications of the CID underscore the extreme difficulty of complying by February 28. For instance, Specification 4 requests an extremely vast and detailed amount of patient and hospital information, including monthly patient days, discharges, inpatient gross revenues and net revenues broken out by hospital department for over three years; number of inpatients, number of inpatient days and outpatient treatment episodes broken out by hospital service and by method of payment (i.e., Medicare, out-of-pocket, health plan, etc.,) for over three years; a list of every physician or health professional who has held staff privileges at Palmyra at any time in the last three years and detailed information about each of them, such as their office address, medical specialty, professional license number, uniform physician number, all hospitals at which the physician/health professional has ever held staff privileges for the past three+ years; and much more. This describes only about one-third of the complete Specification 4. Subsection 4(i) alone could take several days to complete— it asks for a complete description of the feasibility of Palmyra increasing its capacity, including a discussion of the costs and time required to do so.

Similarly, Specification 6 requests a multitude of detailed patient information—this Specification asks for a list of every single outpatient or inpatient Palmyra has served over the

last five+ years, and for each such patient, the Specification asks for age, gender, zip code, a patient identifier, diagnosis and procedure codes, source of the patient, name of health plan, other fee arrangements with the patient, a breakdown of the charges for each patient, and more.

In a typical hospital merger review where the FTC requests data similar to Specifications 4 and 6 in the CID, the parties need three to six months or more to gather, compile, prepare and produce the information sought, and even then it is difficult. These processes simply take a minimum number of hours to complete. Counsel for HCA estimates that it will take well over two weeks just to compile a response to Specifications 4 and 6—and this cannot be done without a modification limiting the time period to January 2008 forward, rather than 2006 forward. Moreover, this is only two out of the 16 different groups of data and information (excluding subparts) requested by the CID.

Moreover, as explained to the FTC Staff on the telephone, as well as in a February 22, 2011 letter,

and translate the data into a format that can be used for the extraction of the data elements requested by Specification 6. All of this must be done before HCA can even begin to compile a response to this Specification, and very well may take more than one week. Once that is done, HCA will have to create a database to respond to the Specification, because it calls for too large a volume of data to put into Excel or other format. Even with the appropriate HCA employees diverting their attentions from their daily business functions to focus solely on these tasks, compliance by the February 28 return date would be impossible. Accordingly, HCA

requested a modification to limit this Specification to data since January 1, 2008, but the request was rejected by the FTC on February 22.[17]

Finally, the responses to these requests are not simply data compilations; each also requires an accompanying narrative response. Pursuant to the CID's Specification 14 and Instruction W, all of the data requested in Specification 4, as well as all the other data requests, must be submitted with all instructions "necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID...." While it is understandable that the Commission needs certain information in order to understand data it receives, this adds to the time and effort needed to prepare an adequate and appropriate response to the CID.

B. The CID and Subpoena Are Overly Broad

The CID and Subpoena request a vast and detailed amount of data, requiring the production of materials dating back over five years, as well as documents, information and data not likely to be material and/or relevant to the Investigation. A subpoena issued by a federal agency is unenforceable if it is "unduly burdensome or unreasonably broad." *See F.T.C. v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir.) (en banc), *cert. denied*, 431 U.S. 974 (1977). Similarly, a request for documents or information is reasonable, relevant and enforceable if the specifications are "adequate, ***but not excessive***, for the purposes of the relevant inquiry." *SEC v. Arthur Young & Co.*, 584 F.2d 1018, 1031 (D.C. Cir. 1978), *cert. denied*, 439 U.S. 1071 (1979) (emphasis added) (quoting *Oklahoma Press Publ'g Co. v. Walling*, 327 U.S. 186, 209 (1946)). The breadth and scope of the requests in the Subpoena and CID at issue are excessive given the short time frame provided for compliance.

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[17] The Staff agreed to allow HCA to provide the data back to 2008 by February 28 and provide the previous two years by March 15, but this modification increases the burden on HCA as it would have to undertake the data extraction exercise twice and would still have to go to undertake the massive efforts to find and restore the older raw data.

1. The Specifications of the Subpoena Are Overly Broad

The Subpoena includes 25 individual requests (including subparts) calling for "all documents" relating to particular broad topics, such as competition, pricing, applications for certificates of need, and other areas. For instance, Specification 3 requires HCA to produce "***[a]ll documents*** relating to (a) metrics of cost and revenue per admission, and (b) comparisons of costs, prices, charges reimbursement rates at other hospitals, wherever located." This Specification calls for an unnecessary volume of documents, as sufficient and meaningful information could be obtained had the Specification requested documents ***sufficient to show*** the requested topic.

Likewise, Specification 5 requests "all documents relating to" HCA's certificate of need ("CON") applications and oppositions to any CON application rather than only the CON applications and oppositions themselves, which could be discretely pulled by HCA, avoiding the necessity of pulling thousands of non-material documents on this subject. Indeed, such broad document requests will yield documents that may technically be responsive, but are not informative, material or necessary to an antitrust analysis. Even with a finite number of people within the Company to search,[18] given the two-week return time frame for compliance, the requirement to pull every document each of those people have created, received, sent or maintained in the last three years or more is excessive.

Further, the Subpoena calls for the production of documents dating from a long period of time, which is unreasonable given the short time frame for compliance. Essentially, the more

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[18] The FTC Staff indicated verbally on February 22 that the 12 custodians proposed by HCA would be acceptable, but on Thursday, February 24, four days before the compliance date, Staff added two new custodians to the list, further increasing the burden to comply by February 28. Moreover, the letter indicates that this "does not limit the requirement that HCA search all appropriate files for specific documents...that would be responsive to any specification, regardless of location or identity of the person in whose files the data or information may be found." Thus, the limitation to 13-15 custodians is meaningless.

years HCA is required to reach back, the more documents that need to be electronically processed and reviewed, slowing the entire process. For instance, most of the Subpoena Specifications are over three years, reaching back to January 2008, and Specification 9 is even longer, seeking all documents related to communications about and negotiations of Palmyra's contracts with health plans for the last seven+ years. The email in a custodian's "Sent Items" folders to be reviewed for this request alone will be enormous. And one still needs to interview each custodian and pull any additional relevant documents from multiple sources for each in order to ensure the inclusion of even marginally responsive materials. Further, as materials related only to health plan contracting activities cannot feasibly be segregated in a search for documents, this essentially necessitates that every custodian who may have documents responsive to this Specification be searched back to January 2004 across the board, even though most of the documents will not be responsive to the Subpoena. What it amounts to is looking for a "needle in a haystack" in seven+ years worth of accumulated materials.

2. The Specifications of the CID Are Overly Broad

The CID is likewise overbroad, asking for a vast amount of data that we believe exceeds what is material to the FTC's investigation, and unreasonable given the time frame required to produce it. The CID as written seeks responses to 87 specific requests for data and information, all of which reach back farther than three years, and some of which ask for over seven years. This would require the collection, analysis and production of a staggering amount of data. For instance, as discussed in Section A.2, Specification 6 requests a tremendous amount of data relating to patients of Palmyra, including 18 different data points such as age, gender, breakdown of hospital charges by service, diagnosis and procedure codes, name of health plan, and health plan charges for every single outpatient and inpatient of Palmyra since 2006. Specification 4 is equally as broad, requiring HCA to provide detailed monthly and/or yearly net and gross revenue

data broken out by hospital department, by procedure and by payor; detailed information about every physician or health professional who has held staff privileges at Palmyra at any time in the last three years; detailed data about every patient transferred to or from the hospital; and a detailed description of the feasibility of increasing capacity, among other things. Given a two-week time frame, it is simply not reasonable to ask that HCA compile such vast and exhaustive data sets.

Finally, as mentioned above, HCA explained to the Staff that because the data collected by the Company is so voluminous,

See supra Section A.2. Thus, several Specifications in the CID, namely the 21 subparts of Specifications 6, 7, 8 and 9, call for retrieval and restoration of stored raw data. The CID, like the Subpoena, was drafted in broad terms, with no regard for the physical and technical limitations of the parties in meeting a February 28 compliance deadline.

C. HCA's Efforts to Comply with the Compulsory Requests Would Obstruct Its Normal Business Operations

The Subpoena and CID are unduly burdensome because even a good faith effort at compliance "threatens to unduly disrupt or seriously hinder" HCA's normal operations. *F.T.C. v. Church & Dwight Co., Inc.*, Misc. No. 10-149 (EGS/JMF), 2010 WL 4283998, at *4 (D.D.C. Oct. 29, 2010) (quoting *F.T.C. v. Church & Dwight Co., Inc.*, Misc. No. 10-149 (EGS/JMF), 2010 WL 4283998, at *4 (D.D.C. Oct. 29, 2010) (quoting *Texaco*, 555 F.2d at 882)). The burden and intrusion imposed on HCA by the Compulsory Requests is further exacerbated by fact that it was issued after HCA had already begun collecting the documents and data requested by the Voluntary Request. As discussed above, before being served the Subpoena and CID, HCA had assured the FTC that it would make best efforts to comply with the Voluntary Request

and was strenuously working to fulfill that obligation. The tasks undertaken to compile a response to the Voluntary Request have required HCA's employees to divert their attention away from the day-to-day operations of the Company. Indeed, HCA has already expended considerable time, effort and expense in complying with the Voluntary Request.

Now, given the wider scope and breadth of the Subpoena and CID, the process has to be started all over again—HCA and counsel essentially had to double-back just days after having interviewed and pulled documents from custodians, and start over. By way of example, one

The Voluntary Request, CID and Subpoena have not only been a disruption at the corporate level of HCA, but have also required a substantial amount of time from HCA employees at the Palmyra hospital level involved in the day-to-day operating of the hospital, unduly disrupting the normal operations of Palmyra. As HCA and its counsel continue to work toward the unattainable compliance dates set forth in the Compulsory Requests, there will be continued and greater disruptions to HCA's and Palmyra's business operations. Given that this Transaction may very well be exempt from antitrust scrutiny under the state action doctrine, expecting the Company to devote these kinds of resources to the FTC's investigation of the antitrust consequences of the Transaction is not reasonable and poses an undue burden on HCA.

GENERAL AND SPECIFIC OBJECTIONS

HCA incorporates by reference the arguments made in its Petition to Quash or Limit Subpoena *Duces Tecum* and Civil Investigative Demand and makes the following general

objections. Each general objection is hereby incorporated by reference into each specification of the CID and the Subpoena.

1. HCA objects to the specifications, definitions, and instructions in the CID and the Subpoena as overly broad and unduly burdensome.

2. HCA objects to the specifications, definitions, and instructions in the CID and the Subpoena on the ground that they unreasonably require full production of documents and information by February 28, 2011.

3. HCA objects to the specifications, definitions, and instructions in the CID and the Subpoena on the ground that they request documents or information that are irrelevant to the FTC's investigation.

4. HCA objects to the specifications, definitions, and instructions in the CID and the Subpoena because compliance by February 28, 2011 would unduly disrupt and seriously hinder normal operations of HCA's business.

5. HCA objects to the specifications, definitions, and instructions in the CID and the Subpoena to the extent that they seek the disclosure of information or production of documents subject to the attorney-client privilege, the attorney work product privilege, the common interest privilege, or any other applicable privilege or immunity.

The following specific objections fully incorporate, are subject to, and are made without waiver of the foregoing general objections.

Specific Objections to the CID

1. Identify (a) all types of health care and clinical services that the Company currently offers, (b) the Company's competitors for each such service, and (c) the geographic area in which the Company and each such competitor competes.

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

2. Identify the geographic areas (by postal zip code) for each type of health care and clinical service identified in response to Specification 1 that the Company regularly serves.

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

3. *Identify all health plans that contract for hospital services with the Company, and provide the total revenues (a) charged and (b) received, from each health plan or entity for the last fiscal or calendar year for which such information is available, and (c) state the contract expiration date for each health plan or entity.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

4. *Submit separately for each hospital or other facility operated by the Company in the relevant area:*

   a. *for each month, the total patient days, patient discharges, inpatient gross revenue, and inpatient net revenue for the hospital as a whole and by individual department;*

   b. *for each year, outpatient visits, outpatient gross revenue, and outpatient net revenue for:*

      (i) *emergency room visits, and*

      (ii) *all other procedures.*

   c. *the total number of licensed, available, and staffed beds on the first day of each year, and the average daily census for each year, separately for the hospital as a whole and for the relevant service;*

   d. *for each year, and separately for the hospital as a whole and for the relevant service (broken down between inpatient and outpatient services), the dollar amount of the hospital's revenues received from, and the number of inpatients, inpatient days, and outpatient treatment episodes where the principal source of payment was from each of the following sources:*

      (i) *Medicare;*

      (ii) *Medicaid;*

(iii) any other health plan (provide data both for all such plans combined, and separately for: (1) each such health plan from which the hospital derives more than 1% of its revenues; and (2) total revenues from all such health plans with which the hospital has contracts providing for reimbursement rates differing from standard charges of the hospital);

(iv) patients (out-of-pocket);

(v) no source of payment ("charity care" patients treated free of charge);

(vi) bad debt; and

(vii) any other source (identify, and provide dollar amounts separately for, any source from which the hospital derives more than 1% of its revenues).

e. a list provided both in hard copy and as computer file(s) showing, for each physician or other health professional who has held professional staff privileges at the hospital:

(i) name;

(ii) current (or last known) office address;

(iii) medical specialty;

(iv) medical practice group (if any);

(v) professional license number;

(vi) any other uniform physician identification number;

(vii) type of staff privileges currently or most recently held;

(viii) each other hospital at which he or she holds (or most recently held) professional staff privileges and the type of privileges held at each hospital;

(ix) the time period during which he or she held admitting privileges at the hospital;

(x) his or her employer(s), if any, during the time period during which he or she held admitting privileges at the hospital, and the time period he or she was employed by each employer; and

(xi) the number of inpatients, and the number of outpatients, he or she admitted to the hospital in each year.

f. *a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred from another hospital, the transferring hospital, the date the patient was transferred, the residence 5-digit ZIP code of the patient, any diagnosis codes, length of stay, revenues for that admission, and the reason for the transfer;*

g. *a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred to another hospital, the transferee hospital, the date the patient was transferred, the residence 5-digit ZIP code, any diagnosis codes, and the reason for the transfer;*

h. *a list provided both in hard copy and as computer file(s) showing for each year, each day on which the hospital went on diversion (i.e., refused to admit additional patients), the reason for each diversion, and the patient census of the hospital on the day the diversion occurred;*

i. *the current nominal and practical capacity, and the annual capacity utilization rate, of the hospital (specifying all other factors used to calculate capacity), and the feasibility of increasing capacity, including the costs and time required;*

j. *the principles used by the Company for accounting for contractual allowances and bad debt; the criteria used to determine which accounts receivable are recorded as bad debt; and the circumstances, if any, under which bad debt or contractual allowances are attributed to charity care or some similar account; and*

k. *for each year the amounts of bad debt and charity care recorded by the Company for each hospital in the relevant area and the amount of bad debt that was re-recorded as charity care.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

5. *Submit the identity of:*

a. *each physician organization owned or managed by the Company, and for each such organization, state or provide:*

(i) *the physician organization's specialty or specialties;*

(ii) *the doctors in the physician organization; and*

(iii) *the billing rates of each doctor in the physician organization.*

b. each entity in the relevant area in which the Company

(i) holds 50 percent or more of the outstanding voting securities of an issuer or, in the case of an unincorporated entity, has the right to 50 percent or more of the profits of the entity, or has the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(ii) has the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts, the trustees of such a trust.

c. each entity not identified in part (b) above for which the Company has an ownership interest, and for each entity submit a description of:

(i) the Company's ownership interest;

(ii) any agreement between the Company and the entity that relates to the Company's ownership in the entity submitting any such documents; and

(iii) the persons who, pursuant to an agreement between the Company and the entity, have served as officers of the entity, board members of the entity, or in any other position with the entity.

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

6. Submit, for each year from 2006 to the present, for any inpatient admission or discharge or outpatient treatment episode at any hospital operated by the Company in the relevant area:

a. the identity of the hospital at which the patient was treated, the address of the hospital, including 5-digit ZIP code, and any hospital identification number used for reimbursement purposes;

b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security Number, by substituting a unique patient identifier as specified in Instruction V); if the Company is providing data in multiple records for the inpatient admission or outpatient visit, a unique identifier

for the admission or visit shall also be included in each record associated with the admission or visit;

c. *the patient's residence 5-digit ZIP code;*

d. *the patient's gender and age (in years) (if the patient age is 90 years or older the Company should so indicate, in lieu of providing the patient's age);*

e. *whether the treatment episode was inpatient or outpatient; if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;*

f. *the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;*

g. *all UB92 revenue codes and revenue code units;*

h. *whether the treatment provided was for an emergency;*

i. *the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);*

j. *the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment;*

k. *identify whether the type of health plan that was the principal source of payment was offered through the Medicare Advantage program;*

l. *whether the Company was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital was in;*

m. *whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;*

n. *charges of the hospital, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan including any adjustments under any stop-loss provisions or any other contractual provision, and any additional amounts paid by the patient;*

o. *any breakdown of the hospital's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU);*

p. *the identity of the patient's admitting physician and, if different, the identity of the treating physician;*

q. *the amount of any payment by the Company to any physicians, not including any payment received in connection with employment by the Company, for any physician services associated with admission or treatment at the Company's hospitals; and*

r. *the patient's status (e.g., normal discharge, deceased, transferred to another hospital, etc.) upon discharge.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

7. *Identify, provide the title, and describe the contents of each financial statement, budget, profit and loss statement, customer or departmental profitability report, and each other financial report regularly prepared by or for the Company on any periodic basis that relates to the relevant service, from year ending 2006 through year-to-date for 2011, and for each such report, state how often each is prepared and the person responsible for its preparation.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

8. *Submit, by hospital, Company-generated descriptions, summaries, and interpretations of contract terms and methodologies (including, but not limited to, per diem formulas, discount of charges formulas, stop loss provisions or any other formulas, codes, or templates containing the relevant terms of the contract between the hospital and health plans), that affect the total consideration any Company-owned or Company-affiliated hospital in the relevant area received or will receive under a contract with a health plan in effect at any time during the time period beginning January 1, 2004.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

9. *Identify for each hospital operated by the Company in the relevant area each person who is now or, since January 1, 2004, was responsible for the Company's negotiation of contracts with health plans or physician organizations, the entities for which each such person negotiates, and the time periods of that person's responsibilities.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

10. *State the name and address of each person that has entered or attempted to enter into, or exited from, the provision of the relevant service in the relevant area from January 1, 2001, to the present. For each such person, identify the date of its entry into or exit from the market. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

11. *Identify or describe (including the basis for your response) the following:*

    a. *requirements for entry into the relevant service in the relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;*

    b. *the total costs required for entry into the provision of the relevant service; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the provision of the relevant service; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;*

    c. *possible new entrants into the provision of the relevant service in the relevant area; and*

d. the minimum viable scale, the minimum and optimum hospital and doctor/nurse-staff size, capacity utilization rate, volume, requirements for multi-facility, multi-services, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the provision of the relevant service.

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

12 List each of the Company's prior acquisitions, affiliations, joint ventures, or similar transactions, and describe each efficiency (including cost savings, economies, new product or service introductions, and product or service improvements) that was expected to be achieved, that has been actually achieved, or is in the process of being achieved from each such transaction, including in the description:

a. the steps that the Company took to achieve the efficiency and the time and costs required to achieve it;

b. the dollar value of the efficiency and a detailed explanation of how that was calculated;

c. an explanation of how each prior transaction helped the Company achieve the efficiency;

d. the reason(s) the Company could not have achieved the efficiency without the prior transaction;

e. the proportion of the dollar value of the efficiency that the company passed on to consumers and the manner and form (e.g., lower prices, better service) in which the company passed on the efficiency;

f. the identity of each person (including the person's title, telephone number, and business address) employed or retained by the company (including the Company's counsel) with any responsibility for achieving, analyzing, or quantifying any efficiency described; and

g. for each efficiency that involved cost savings, state separately:

(i) the one-time fixed cost savings; and

(ii) the variable cost savings (in dollars per unit and dollars per year).

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

13. Provide:

a. a detailed description of (including the rationale for, and identification of all documents directly or indirectly used to prepare the Company's response to this CID);

b. a detailed description of (including the identification of all documents directly or indirectly used to prepare the Company's response to this sub-part and quantification, if possible, of all cost savings, economies or other efficiencies) the reasons for the proposed joinder, and the benefits, costs, and risks anticipated as a result of the proposed joinder, including, but not limited to, all cost savings, economies, or other efficiencies of whatever kind; and

c. a detailed description of all statements or actions by any person (identifying the person by name, title, phone number, and business address) in support of, in opposition to, or otherwise expressing opinions about the proposed joinder or its effects.

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

14. Submit all information described in Instruction W below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

15. *Describe in detail the Company's policies and procedures relating to the retention and destruction of documents.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

16. *Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and provide a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent it is overbroad in that HCA cannot search for, collect, process, review and produce all non-privileged information responsive to this Specification within the 14 days required by the CID. HCA objects to this Specification to the extent it requests information that is irrelevant to the FTC's investigation.

Specific Objections to the Subpoena

1. *Each organization chart and personnel directory and (b) a list of all agents and representatives, including, but not limited to, all attorneys, consultants, investment bankers, product distributors, sales agents, and other persons retained by the Company in any capacity relating to the relevant transaction (other than those retained solely to environmental, tax, human resources, pensions, benefits, ERISA, or OSHA issues).*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

2. *(a) All annual reports and other regularly prepared or periodic financial statements and reports, including but not limited to Medicare cost reports, income and retained income statements; cash flow statements; balance sheets; cost center*

reports; and departmental, facility, and profitability statements and reports; (b) all documents relating to, quantifying, or identifying contribution margins, fixed costs, or variable costs; and (c) all documents relating to the viability, gross or net margins, retained surplus, ability to obtain financing for capital improvements, or any other aspect of the financial condition of the Company.

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

3. *All documents relating to (a) metrics of cost and revenue per admission, and (b) comparisons of costs, prices, charges, reimbursement rates at other hospitals, wherever located.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

4. *All data or reports submitted to or received from or by (a) a quality of care rating organization, and (b) a price comparison rating organization.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

5. *All documents relating to (a) the Company's certificate of need ("CON") applications submitted for its services, and (b) the Company's opposition to any CON application.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

6. *All documents relating to competition including, but not limited to, market studies, forecasts and surveys, and all other documents relating to: (a) the market share, identification, or competitive position of the Company or any of its competitors, including discussions of service areas, patient origins, and draw areas; (b) the relative strength or weakness of companies; (c) supply and demand conditions; (d) attempts to gain or retain individual patients, contracts with health plans, or physicians' patient admissions; (e) allegations by any person that any hospital is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints, threatened, pending, or completed lawsuits, and federal and state investigations; and (f) any actual or potential effect on the supply, demand, cost, or price of the relevant service as a result of competition from any other possible substitute service.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

7. *All plans, including but not limited to business plans; short term and long range strategies and objectives; budgets and financial projections; investment banker and other consultant reports; expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, or boards of directors.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

8. *All documents relating to the Company's or any other person's chargemaster, price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

9. *All contracts with health plans, now in effect or that were in effect at any time on or after January 1, 2004, along with all documents relating to communications, negotiations for contract terms and contracts, and reimbursement rates, between the Company and (a) health plans, (b) commercial health insurers, (c) health maintenance organizations, (d) preferred provider plans, (e) self-insured employee health benefit plans, (f) employers, (g) unions, and (h) physicians or physician organizations.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

10. *All documents relating to formal or informal commercial or operational relationships or affiliations of any type between or among the Company and any hospital or physician organization.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

11. *All documents relating to (a) requirements for entry or expansion, including but not limited to any necessary governmental approval and the time necessary to meet each entry requirement; (b) the total cost required for entry; and (c) possible new entrants.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

12. *All documents (except engineering and architectural plans and blueprints) relating to any plans of the Company or any other person for the construction of new facilities, the closing of any existing facilities, or the expansion, conversion, or modification (if such modification has a planned or actual cost of more than $1 million) of current facilities.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

13. *All documents relating to litigation between the Company and Phoebe Putney Medical Center, Inc., or Phoebe Putney Health System, Inc.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

14. *All documents relating to any plans of, interest in, or efforts undertaken by the Company or any other person for any acquisition, divestiture, joint venture, alliance, or merger, of any kind.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

15. *All documents analyzing or discussing the effect of any merger, joint venture, acquisition, or consolidation, including but not limited to the proposed acquisition, on prices, costs, margins, services, service quality, or any other aspect of competitive performance, including but not limited to expected improvements related to: (a) quality of care or safety; (b) the modernization or expansion of hospital facilities; (c) the integration of medical services or staff; and (d) the accessibility of services to the indigent or other populations.*

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

16. *All documents (other than documents relating solely to environmental, tax, human resources, OSHA, or ERISA issues) relating to the proposed acquisition,*

including but not limited to (a) the valuation of the assets of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center, and (b) the reasons for the acquisition.

OBJECTION

HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

17. *Documents sufficient to show the Company's policies and procedures relating to the retention and destruction of documents.*

OBJECTION

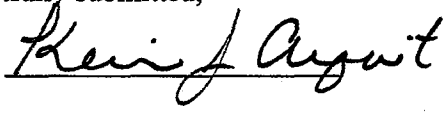
HCA incorporates by reference all of its general objections set forth above. HCA objects to this Specification to the extent that it is overbroad in that HCA cannot search for, collect, process, review, and produce all non-privileged documents and information responsive to this Specification within the 14 days required by the Subpoena. HCA objects to this Specification to the extent it requests documents that are irrelevant to the FTC's investigation.

CONCLUSION

For all of the foregoing reasons, as well as those set forth in the accompanying Exhibits, HCA respectfully requests that the Commission quash the Subpoena and the CID. In the alternative, HCA respectfully requests that the Commission modify the return dates of the Subpoena and CID to provide a reasonable time for compliance and to limit the Subpoena and CID based on the objections set forth above.

Dated: February 25, 2011

Respectfully submitted,

By: 

Kevin J. Arquit, Esq.
Aimee Goldstein, Esq.
Jennifer Rie, Esq.
Meryl Rosen, Esq.

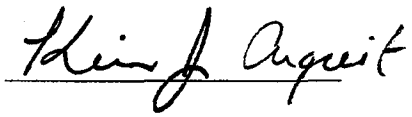
SIMPSON, THACHER & BARTLETT, LLP
425 Lexington Avenue
New York, NY 10017
(212) 455-2000
(212) 455-2502 (fax)

Counsel for Petitioner

STATEMENT OF KEVIN J. ARQUIT PURSUANT TO 16 C.F.R. § 2.7(d)(2)

I am Partner with Simpson Thacher & Bartlett LLP, counsel for HCA, Inc. ("HCA"). I submit this statement in connection with HCA's Petition to Quash or Limit the Civil Investigative Demand and the Subpoena *Duces Tecum* (the "Petition"). On February 15, 2011, the FTC served the Subpoena *Duces Tecum* and Civil Investigative Demand; FTC File No. 111-0067 (the "Compulsory Requests") on HCA. On February 18, 2011, counsel for HCA conferred with Goldie Walker and Stephen Stockwell, counsel for the Commission, by telephone in a good faith attempt to resolve the issues set forth in the Petition. During the hour-long phone call, counsel for HCA proposed modifications to the Subpoena and CID, particularly with regard to the return date and the scope of certain specifications. On February 22, the Commission Staff verbally agreed to some of these requests and denied others. On February 24, as specified in this Petition and in the Exhibits attached hereto, the Staff agreed to some of these requests and denied others in writing. Although some modification requests were verbally granted, it was not sufficient to alleviate the burden of the CID and Subpoena.

Dated: February 25, 2011



Kevin J. Arquit, Esq.
SIMPSON THACHER & BARTLETT, LLP
425 Lexington Avenue
New York, New York 10017
(212) 455-3472

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of February, 2011, I caused the original and twelve (12) copies of both Public and Confidential versions of the Petition to Quash or Limit with attached Exhibits to be filed by hand delivery with the Secretary of The Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C., 20580; and one (1) copy of the same to be filed by hand delivery with Goldie Walker, Esq., 601 New Jersey Avenue, N.W., Washington, D.C., 20580.

Dated: February 25, 2011

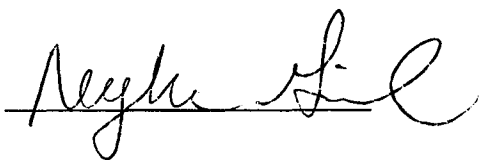


EXHIBIT A

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV
~
Joseph Brownman
Attorney
~
Direct Dial
202-326-2605

E-Mail
jbrownman@ftc.gov
~
Fax
202-326-2286

February 4, 2011

VIA FEDERAL EXPRESS
ADVANCE PDF COPY VIA E-MAIL

Lee K. Van Voorhis, Esq.
Weil, Gotshal & Manges
1300 Eye Street, NW
Washington, DC 20005
(lee.vanvoorhis@weil.com)

Kevin J. Arquit, Esq.
Simpson Thatcher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017 - 3954
(karquit@stblaw.com)

Re: Phoebe Putney / Palmyra
FTC File No. 111 0067

Dear Lee and Kevin:

Thank you for your calls to me yesterday. I am happy to respond to Lee's request that we specify the "key" documents and information that the Commission needs. I do so because I believe it is in our mutual interest to expedite the Commission's substantive antitrust analysis of your pending transaction. I must emphasize, however, that this continued informal approach does not compromise the Commission's discretion to issue a more comprehensive subpoena or civil investigative demand requiring the kind of production and investigation hearings that we typically seek in a hospital merger investigation.

We have structured the items in this request to apply separately, but also consistently, to (a) Phoebe Putney Health System, Inc. and Phoebe Putney Memorial Hospital, Inc. (collectively "Phoebe Putney") and (b) Palmyra Medical Center, Inc. and HCA, Inc. (collectively "Palmyra"). Our geographic area of interest is limited to Southwest Georgia. The specifications are as follows:[1]

1. All documents relating to any aspect or part of the proposed transaction and acquisition, (including any closing date) involving Phoebe Putney, Phoebe North, Inc, the Hospital Authority of Albany - Dougherty County ("Hospital Authority"), Palmyra, Dougherty County, and any interim manager of Phoebe North.[2]

2. For the period January 1, 2006, all documents relating to any pending litigation or potential litigation between Phoebe Putney, or the Hospital Authority, with Palmyra, including copies of all pleadings.

3. For the period January 1, 2008, to the present, all documents relating to (a) competition between Phoebe Putney with Palmyra or any other hospital or facility, (b) competition between Palmyra with Phoebe Putney or any other hospital or facility, and (c) hospital competition in (i) the Southwest Georgia and (ii) the Albany area.

4. For the most recent 12-month period, the database that contains patient draw data, by postal zip code and specific type of service provided, for (a) Phoebe Putney and (b) Palmyra.[3] (Please make arrangements with us for an appropriate IT

---

[1] To expedite matters we have not drafted the lengthy definitions or instructions that typically accompany a document request. Based upon your suggestion that we continue to proceed in an informal manner, we expect that the parties will honor the standard practices necessary to yield a comprehensive production. For example, we expect the parties to extend production to documents in the possession of any party affiliated with Phoebe Putney, such as Phoebe North, Inc., or with Palmyra, such as HCA. We also expect the parties will confirm that their production is complete by submitting the attached certification. Also, we reserve the right to conduct hearings of company personnel to determine the adequacy of the search and production.

[2] The terms "Phoebe Putney", the "Hospital Authority", and "Palmyra" include their domestic and foreign parents, predecessors, divisions, subdivisions, affiliates, partnerships, and joint ventures, and all directors, officers, employees, agents, and representatives. The terms subsidiary, affiliate, and joint venture refer to any entity as to which there is a 10 percent or more ownership or control between Phoebe Putney, the Hospital Authority, Palmyra, and the entity.

[3] To protect patient privacy, mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license

Mark J. Horoschak, Esq.
Womble Carlyle Sandridge & Rice, PLLC
One Wells Fargo Center
Suite 3500
Charlotte, NC 28202 - 6037
(mhoroschak@wcsr.com)

Robert J. Baudino, Jr., Esq.
Baudino Law Group, PLC
2600 Grand Avenue
Suite 300
Des Moines, IA 50312
(baudino@baudino.com)

CERTIFICATION

This response to the letter request for documents and/or information of the Federal Trade Commission's Bureau of Competition dated February 4, 2011, was prepared and assembled under my supervision in accordance with the definitions and instructions contained in that request. The material provided is, to the best of my knowledge, true, correct, and complete and the documents submitted, to the best of my knowledge, is a full and complete response to the request for documents. Where copies rather than original documents have been submitted, the copies are true, correct, and complete. If the Commission uses such copies in any court or administrative proceeding, the Company will not object to the use by the Commission of such copies rather than the original documents.

_____
TYPE OR PRINT NAME

_____
TITLE

—
_____
DATE

—
_____
(Signature)

EXHIBIT B

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV

Goldie Veronica Walker
Attorney

Email
gwalker@ftc.gov

Direct Dial
202-326-2919

Fax
202-326-2286

February 24, 2011

VIA E-MAIL

Jennifer Rie, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017

RE: Phoebe Putney/Palmyra
FTC File No. 111-0067

Dear Jennifer:

This letter responds to your correspondence dated February 22, 2011, as well as our recent discussions, regarding suggested modifications to the Civil Investigative Demand ("CID") and Subpoena *Duces Tecum* ("SDT") issued to HCA Inc. ("HCA"). Based upon the representations contained in your letter, we make the modifications listed below.

Our agreement to modify the SDT and CID is based on the accuracy and completeness of the information we have received from you to date. If such information is inaccurate or incomplete, we reserve the right to reexamine any issues affected by any modification described below. Our agreement to modify the SDT and CID is conditioned on HCA's full compliance with the SDT and CID as modified by this letter and any subsequent modification letters. A further condition to our agreement to modify the SDT and CID is HCA's agreement that any document and information excluded by modification of the SDT and CID will not be used before the Federal Trade Commission or in any subsequent administrative or federal court proceeding relating to the Hospital Authority of Albany-Dougherty County/Phoebe Putney Health System, Inc.'s acquisition of Palmyra Park Hospital, Inc ("Palmyra").

SDT Specification 3

The words "all documents relating to" may be modified to read "documents sufficient to show."

CID Specification 4(f)

HCA may limit its response to the final diagnosis code for each patient.

CID Specification 6

HCA may produce by March 15, 2011, responsive data contained on archived back-up tapes for the time period January 1, 2006, to January 1, 2008.

CID Specification 7

HCA may exclude the narratives that accompany the responsive documents provided that HCA supplies a written explanation to FTC staff regarding any question relating to the responsive documents within two days of a request made by FTC staff.

SDT and CID - Definition and Instruction A

The definition of "Company" may be limited to include only the HCA corporate entity and any subsidiary within HCA having any responsibility for HCA's operations in the relevant area.

SDT Scope of Search

HCA may limit the scope of its search for responsive documents to the files of the following thirteen custodians:

1. Thomas Bell, HCAPS Operations
2. David Dye, CFO, North Florida Division
3. Frank Elliott, Regional VP of Managed Care
4. Gregg Gerken, Vice President of Development
5. Traci Glankler, Regional VP of Managed Care
6. Karen Hayes, CFO of Palmyra
7. Michael Joyce, President, North Florida Division
8. Mickey Pickler, VP of HCAPS Operations
9. Mark Rader, CEO and President of Palmyra
10. Joseph Sowell, Sr VPand Chief Development Officer
11. Pamela Tucker, Assistant VP of Managed Care
12. Brandon Webb, VP of Strategic Planning & Development
13. Eric Riggle, Head of Marketing at Palmyra

As we discussed today, staff would like to receive additional information about the responsibilities of Jan Bundies, Assistant Vice President of Quality at Palmyra, before we exclude this custodian from the search for responsive documents.

This limitation on the search for responsive documents does not limit the requirement that HCA search all appropriate files for specific documents, identified categories of documents, and information (e.g., regularly prepared financial statements, pleadings from litigation, etc.) that would be responsive to any specification, regardless of location or the identity of the person in whose files the data or information may be found. The limitation of the custodians also includes all persons that may have possession, custody, or control over the files of these custodians, such as administrative assistants and secretaries, and includes documents of the custodians that may be stored in common file areas.

We also accept your request to move the investigation hearing of Mr. Mark Rader, CEO and President of Palmyra, from March 3, 2011, as noticed in the Subpoena *Ad Testificandum*, to March 4, 2011.

If you have any questions, I am happy to address them at any time.

Kind regards,

Goldie V. Walker

cc: Joseph Brownman

Approved by:

Matthew J. Reilly
Assistant Director
Mergers IV

EXHIBIT C

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV
~
Joseph Brownman
Attorney
~
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E-Mail
jbrownman@ftc.gov
~
Fax
202-326-2286

January 18, 2011

VIA FEDERAL EXPRESS
ADVANCE PDF COPY VIA E-MAIL (karquit@stblaw.com)

Kevin J. Arquit, Esq.
Simpson Thatcher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017 - 3954

Re: Phoebe Putney / Palmyra
FTC File No. 1110067

Dear Kevin:

Thank you coming to see us last Friday. The state action presentation was very helpful to us as we try better to understand all of the relevant facts and issues related to our investigation.

I think that all of the specific documents that we need based upon what we learned at our meeting should be available from others present, so I have no specific additional request to direct to HCA at this time. We do, however, renew our request for all of the information and material specified in my letter of December 29, 2010, to Mr. Waterman.

The posture of our investigation remains preliminary. While we recognize that the state action issue is potentially dispositive in your favor (and therefore requires our full attention), the possibility that the parties to the proposed acquisition may close before the Commission will have had an opportunity to give us direction on the entirety of the transaction requires that we not limit our investigation to the state action issue.

We therefore renew our request that HCA give us a commitment in writing that the proposed transaction with the Hospital Authority and Phoebe Putney will not close until at least 45 days after a full and complete compliance with our letter request, as written or as it may be

amended after further discussion with you or your representatives. As always, I am more than happy to discuss our needs, and any possible undue burdens.

Sincerely,

Joseph Brownman

cc: Aimee H. Goldstein, Esq. (agoldstein@stblaw.com)
Simpson Thatcher & Bartlett LLP
425 Lexington Avenue
New York, New York 10017 - 3954

Mark J. Horoschak, Esq. (mhoroschak@wcsr.com)
Womble Carlyle Sandridge & Rice, PLLC
One Wells Fargo Center
Suite 3500
Charlotte, North Carolina 28202 - 6037

EXHIBIT D

United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

HCA Inc.
C/O Robert A. Waterman, Esq.
Senior Vice President and General Counsel
One Park Plaza
Nashville, TN 37203

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission 601 New Jersey Avenue, N.W. Suite 5257 Washington, D.C. 20001	Goldie Walker or other designated counsel DATE AND TIME OF HEARING OR DEPOSITION

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

February 28, 2011 at 5:00 p.m.

3. SUBJECT OF INVESTIGATION

Proposed Acquisition by the Hospital Authority of Albany-Dougherty County of Palmyra Park Medical Center, Inc. from HCA, Inc.
FTC File No. 111-0067. See the attached Resolution authorizing use of Compulsory Process.

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	5. COMMISSION COUNSEL
Matthew Reilly, Records Custodian Goldie Walker, Deputy Records Custodian	Goldie Walker, Esq. (202) 326-2919

DATE ISSUED	COMMISSIONER'S SIGNATURE
2/14/11	Edith Ramirez

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

_____ _____

_____
Notary Public

_____

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

CIVIL INVESTIGATIVE DEMAND
ISSUED TO HCA INC.
FTC File No. 111-0067

Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in the Definitions and Instructions. If the Company believes that any other part of this CID may be narrowed in a manner that is consistent with the Commission's need for information, you are encouraged to discuss any questions and possible modifications with the Commission representative identified on page 17. All modifications to this CID must be agreed to in writing.

Responses to specification identified with an asterisk (*) are to be provided in electronic format specified in Instruction W.4.

SPECIFICATIONS

Unless otherwise indicated all specifications are limited to the relevant service in the relevant area, for the time period January 1, 2008, to the present.

1. Identify (a) all types of health care and clinical services that the Company currently offers, (b) the Company's competitors for each such service, and (c) the geographic area in which the Company and each such competitor competes.

2. Identify the geographic areas (by postal zip code) for each type of health care and clinical service identified in response to Specification 1 that the Company regularly serves.

3. Identify all health plans that contract for hospital services with the Company, and provide the total revenues (a) charged and (b) received, from each health plan or entity for the last fiscal or calendar year for which such information is available, and (c) state the contract expiration date for each health plan or entity.

4.* Submit separately for each hospital or other facility operated by the Company in the relevant area:

   a. for each month, the total patient days, patient discharges, inpatient gross revenue, and inpatient net revenue for the hospital as a whole and by individual department;

   b. for each year, outpatient visits, outpatient gross revenue, and outpatient net revenue for:

      (i) emergency room visits, and

      (ii) all other procedures.

c. the total number of licensed, available, and staffed beds on the first day of each year, and the average daily census for each year, separately for the hospital as a whole and for the relevant service;

d. for each year, and separately for the hospital as a whole and for the relevant service (broken down between inpatient and outpatient services), the dollar amount of the hospital's revenues received from, and the number of inpatients, inpatient days, and outpatient treatment episodes where the principal source of payment was from each of the following sources:

(i) Medicare;

(ii) Medicaid;

(iii) any other health plan (provide data both for all such plans combined, and separately for: (1) each such health plan from which the hospital derives more than 1% of its revenues; and (2) total revenues from all such health plans with which the hospital has contracts providing for reimbursement rates differing from standard charges of the hospital);

(iv) patients (out-of-pocket);

(v) no source of payment ("charity care" patients treated free of charge);

(vi) bad debt; and

(vii) any other source (identify, and provide dollar amounts separately for, any source from which the hospital derives more than 1% of its revenues).

e. a list provided both in hard copy and as computer file(s) showing, for each physician or other health professional who has held professional staff privileges at the hospital:

(i) name;

(ii) current (or last known) office address;

(iii) medical specialty;

(iv) medical practice group (if any);

(v) professional license number;

(vi) any other uniform physician identification number;

(vii) type of staff privileges currently or most recently held;

(viii) each other hospital at which he or she holds (or most recently held) professional staff privileges and the type of privileges held at each hospital;

(ix) the time period during which he or she held admitting privileges at the hospital;

(x) his or her employer(s), if any, during the time period during which he or she held admitting privileges at the hospital, and the time period he or she was employed by each employer; and

(xi) the number of inpatients, and the number of outpatients, he or she admitted to the hospital in each year.

f. a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred from another hospital, the transferring hospital, the date the patient was transferred, the residence 5-digit ZIP code of the patient, any diagnosis codes, length of stay, revenues for that admission, and the reason for the transfer;

g. a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred to another hospital, the transferee hospital, the date the patient was transferred, the residence 5-digit ZIP code, any diagnosis codes, and the reason for the transfer;

h. a list provided both in hard copy and as computer file(s) showing for each year, each day on which the hospital went on diversion (*i.e.,* refused to admit additional patients), the reason for each diversion, and the patient census of the hospital on the day the diversion occurred;

i. the current nominal and practical capacity, and the annual capacity utilization rate, of the hospital (specifying all other factors used to calculate capacity), and the feasibility of increasing capacity, including the costs and time required;

j. the principles used by the Company for accounting for contractual allowances and bad debt; the criteria used to determine which accounts receivable are recorded as bad debt; and the circumstances, if any, under which bad debt or contractual allowances are attributed to charity care or some similar account; and

k. for each year the amounts of bad debt and charity care recorded by the Company for each hospital in the relevant area and the amount of bad debt that was re-recorded as charity care.

5. Submit the identity of:

a. each physician organization owned or managed by the Company, and for each such organization, state or provide:

(i) the physician organization's specialty or specialties;

(ii) the doctors in the physician organization; and

(iii) the billing rates of each doctor in the physician organization.

b. each entity in the relevant area in which the Company

(i) holds 50 percent or more of the outstanding voting securities of an issuer or, in the case of an unincorporated entity, has the right to 50 percent or more of the profits of the entity, or has the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(ii) has the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts, the trustees of such a trust.

c. each entity not identified in part (b) above for which the Company has an ownership interest, and for each entity submit a description of:

(i) the Company's ownership interest;

(ii) any agreement between the Company and the entity that relates to the Company's ownership in the entity submitting any such documents; and

(iii) the persons who, pursuant to an agreement between the Company and the entity, have served as officers of the entity, board members of the entity, or in any other position with the entity.

6. Submit, for each year from 2006 to the present, for any inpatient admission or discharge or outpatient treatment episode at any hospital operated by the Company in the relevant area:

a. the identity of the hospital at which the patient was treated, the address of the hospital, including 5-digit ZIP code, and any hospital identification number used for reimbursement purposes;

b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security Number, by substituting a unique patient identifier as specified in Instruction V); if the Company is providing data in multiple records for the inpatient admission or outpatient visit, a unique identifier for the admission or visit shall also be included in each record associated with the admission or visit;

c. the patient's residence 5-digit ZIP code;

d. the patient's gender and age (in years) (if the patient age is 90 years or older the Company should so indicate, in lieu of providing the patient's age);

e. whether the treatment episode was inpatient or outpatient; if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;

f. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;

g. all UB92 revenue codes and revenue code units;

h. whether the treatment provided was for an emergency;

i. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);

j. the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment;

k. identify whether the type of health plan that was the principal source of payment was offered through the Medicare Advantage program;

l. whether the Company was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital was in;

m. whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;

n. charges of the hospital, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan including any adjustments under any stop-loss provisions or any other contractual provision, and any additional amounts paid by the patient;

o. any breakdown of the hospital's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU);

p. the identity of the patient's admitting physician and, if different, the identity of the treating physician;

q. the amount of any payment by the Company to any physicians, not including any payment received in connection with employment by the Company, for any physician services associated with admission or treatment at the Company's hospitals; and

r. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

7. Identify, provide the title, and describe the contents of each financial statement, budget, profit and loss statement, customer or departmental profitability report, and each other financial report regularly prepared by or for the Company on any periodic basis that relates to the relevant service, from year ending 2006 through year-to-date for 2011, and for each such report, state how often each is prepared and the person responsible for its preparation.

8. Submit, by hospital, Company-generated descriptions, summaries, and interpretations of contract terms and methodologies (including, but not limited to, per diem formulas, discount of charges formulas, stop loss provisions or any other formulas, codes, or templates containing the relevant terms of the contract between the hospital and health plans), that affect the total consideration any Company-owned or Company-affiliated hospital in the relevant area received or will receive under a contract with a health plan in effect at any time during the time period beginning January 1, 2004.

9. Identify for each hospital operated by the Company in the relevant area each person who is now or, since January 1, 2004, was responsible for the Company's negotiation of contracts with health plans or physician organizations, the entities for which each such person negotiates, and the time periods of that person's responsibilities.

10. State the name and address of each person that has entered or attempted to enter into, or exited from, the provision of the relevant service in the relevant area from January 1, 2001, to the present. For each such person, identify the date of its entry into or exit from

the market. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.

11. Identify or describe (including the basis for your response) the following:

    a. requirements for entry into the relevant service in the relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

    b. the total costs required for entry into the provision of the relevant service; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the provision of the relevant service; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;

    c. possible new entrants into the provision of the relevant service in the relevant area; and

    d. the minimum viable scale, the minimum and optimum hospital and doctor/nurse-staff size, capacity utilization rate, volume, requirements for multi-facility, multi-services, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the provision of the relevant service.

12 List each of the Company's prior acquisitions, affiliations, joint ventures, or similar transactions, and describe each efficiency (including cost savings, economies, new product or service introductions, and product or service improvements) that was expected to be achieved, that has been actually achieved, or is in the process of being achieved from each such transaction, including in the description:

    a. the steps that the Company took to achieve the efficiency and the time and costs required to achieve it;

    b. the dollar value of the efficiency and a detailed explanation of how that was calculated;

    c. an explanation of how each prior transaction helped the Company achieve the efficiency;

d. the reason(s) the Company could not have achieved the efficiency without the prior transaction;

e. the proportion of the dollar value of the efficiency that the company passed on to consumers and the manner and form (*e.g.*, lower prices, better service) in which the company passed on the efficiency;

f. the identity of each person (including the person's title, telephone number, and business address) employed or retained by the company (including the Company's counsel) with any responsibility for achieving, analyzing, or quantifying any efficiency described; and

g. for each efficiency that involved cost savings, state separately:

(i) the one-time fixed cost savings; and

(ii) the variable cost savings (in dollars per unit and dollars per year).

13. Provide:

a. a detailed description of (including the rationale for, and identification of all documents directly or indirectly used to prepare the Company's response to this CID);

b. a detailed description of (including the identification of all documents directly or indirectly used to prepare the Company's response to this sub-part and quantification, if possible, of all cost savings, economies or other efficiencies) the reasons for the proposed joinder, and the benefits, costs, and risks anticipated as a result of the proposed joinder, including, but not limited to, all cost savings, economies, or other efficiencies of whatever kind; and

c. a detailed description of all statements or actions by any person (identifying the person by name, title, phone number, and business address) in support of, in opposition to, or otherwise expressing opinions about the proposed joinder or its effects.

14. Submit all information described in Instruction W below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.

15. Describe in detail the Company's policies and procedures relating to the retention and destruction of documents.

16. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and provide a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

A. The term "the Company" means HCA Inc. and Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center, ("Palmyra"), their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. The terms "and" and "or" have both conjunctive and disjunctive meanings.

C. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.

1. Unless otherwise specified, the term "documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents relating solely to environmental, tax, human resources, OSHA, or ERISA issues.

2. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and

tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representative identified on the last page of this CID. The Commission representative will consider modifying this instruction to:

(a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;

(b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by the Commission representative; or

(c) include other proposals consistent with Commission policy and the facts of the case.

D. The terms "each," "any," and "all" mean "each and every."

E. The term "entity" means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.

F. The term "health plan" means any health maintenance organization, preferred provider arrangement or organization, managed health care plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental health care plan or insurance of any kind.

G. The term "hospital" means a facility that provides the relevant service as defined herein.

H. The term "minimum viable scale" means the smallest service volume at which average costs equal the price currently charged for the relevant service. Minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

I. The term "operate" with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under

a management contract, have the power to appoint the majority of the facility's governing board or body, or otherwise directly or indirectly control the facility or unit.

J. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

K. The term "physician organization" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine, such as a physician group.

L. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

M. The term "provider" means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, or other healthcare facilities.

N. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.

O. The term "relevant area" means the following counties in the State of Georgia: Atkinson, Baker, Ben Hill, Berrien, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dooly, Dougherty, Early, Echols, Grady, Houston, Irwin, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Quitman, Pulaski, Randolph, Schley, Seminole, Stewart, Sumter, Terrell, Thomas, Tift, Turner, Webster, Wilcox, and Worth.

P. The term "relevant service" means the provision of general acute care hospital services including (1) inpatient services; (2) outpatient services; (3) emergency room services; (4) gastroenterological services; and (5) diagnostic imaging and scanning services including magnetic resonance imaging ("MRI"). The relevant service encompasses the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities but excludes treatments of mental illness or substance abuse, long-term services such as skilled nursing care, and services provided by a non-employee physician or non-owned physician organizations.

Q. The term "relevant transaction" means and includes the proposed joinder or acquisition by the Hospital Authority of Albany - Dougherty County (the "Hospital Authority") of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center ("Palmyra"), from HCA Inc., and all related transactions or agreements, including those dealing with (a) the operation of the Palmyra facility after the acquisition, (b) the supervision by the Hospital Authority

of the Palmyra assets after the acquisition, and (c) the creation and operation of Phoebe North, Inc. and the supervision of Phoebe North, Inc., and (d) the integration of the assets of Palmyra and/or Phoebe North Inc., into the operations of Phoebe Putney Health System, Inc., or Phoebe Putney Memorial Hospital, Inc.

R. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.

S. The term "sunk costs" means the acquisition costs of tangible and intangible assets necessary to provide the relevant service that cannot be recovered through the redeployment of these assets for other uses.

T. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for information and/or documents for each of the years from January 1, 2008, to the present. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the twelve month period covered, and provide the Company's best estimate of calendar year data.

U. This CID shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this CID produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this CID.

V. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this CID, PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this CID, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company shall substitute for the masked information a unique patient identifier that is different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient. Otherwise, the Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

W. The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

1. Documents stored in electronic or hard copy format in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:

   (a) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text[1] and metadata;

   (b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and

   (c) Submit all hard copy documents in image format accompanied by OCR.

2. For each document submitted in electronic format, include the following metadata fields and information:

   (a) For loose documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and MD5 or SHA Hash value;

   (b) For emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);

   (c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and MD5 or SHA Hash value; and

   (d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.

3. If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the

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[1]"Extracted text" is a term of art that refers to the underlying text of a native file that allows the native file to be converted into another searchable format.

Company's computer systems or electronic storage media in response to this CID, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

4. For each specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.

5. Submit electronic files and images as follows:

   (a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;

   (b) For productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats; and

   (c) All documents produced in electronic format shall be scanned for and free of viruses. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID.

6. All documents responsive to this CID, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

   (a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:

      i. If in their original condition hard copy documents were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover or container from which such documents came; and

      ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such

form and information shall be produced so as to clearly specify the folder or organization format;

(b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(c) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(d) Shall be marked on each page with corporate identification and consecutive document control numbers;

(e) Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct and complete copies of the original documents; and

(f) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Commission representative determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

X. If any document or information is withheld from production based upon a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm Denote all attorneys with an asterisk and state the representation of the attorney at the time the documents was created. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the

applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

1. The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made.

2. Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five (5) individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this CID.

3. For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

   (a) The Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

   (b) The Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15)

calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

(c) The Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

4. The Company retains all privileged documents that are responsive to CID until the completion of any investigation of the relevant transaction.

5. The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Z. If information responsive to a particular specification is no longer available because documents or data bases that contained the information no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy as disclosed or described in the Company's response to Specification 15 of this CID, but the Company has reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents or data bases.

AA. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising the response, notarized, and submitted along with the responsive information and material.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications should be directed to Goldie Walker at (202) 326-2919. The response to the CID shall be addressed to the attention of Ms. Goldie Walker, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Commission's New Jersey Avenue address.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION

File No. 111 0067

Nature and Scope of Investigation:

To determine whether the proposed acquisition by The Hospital Authority of Albany-Dougherty County and/or Phoebe Putney Health System, Inc. of Palmyra Park Hospital, Inc. from HCA, Inc. is in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the proposed acquisition, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Issued: February 8, 2011

EXHIBIT E

SUBPOENA DUCES TECUM

1. TO	2. FROM
HCA Inc. C/O Robert A. Waterman, Esq. Senior Vice President and General Counsel One Park Plaza Nashville, TN 37203	UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

3. LOCATION OF HEARING	4. YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission 601 New Jersey Avenue, N.W. Suite 5257 Washington, D.C. 20001	Goldie Walker or other designated counsel
	5. DATE AND TIME OF HEARING OR DEPOSITION
	* February 28, 2011 at 5:00 p.m.

6. SUBJECT OF INVESTIGATION

Proposed Acquisition by the Hospital Authority of Albany-Dougherty County of Palmyra Park Medical Center, Inc. from HCA, Inc., FTC File No. 111-0067. See the attached Resolution authorizing use of Compulsory Process.

7. RECORDS YOU MUST BRING WITH YOU

Provide the responses to the specifications of the attachment. *In lieu of personal appearance, you may submit the requested material along with the certification attesting to the completeness of the response.

8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	9. COMMISSION COUNSEL
Matthew Reilly, Records Custodian Goldie Walker, Deputy Records Custodian	Goldie Walker, Esq. (202) 326-2919

DATE ISSUED	COMMISSIONER'S SIGNATURE
2/14/11	Edith D.

GENERAL INSTRUCTIONS

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

○ *in person.*

○ *by registered mail.*

○ *by leaving copy at principal office or place of business, to wit:*

on the person named herein on:

(Month, day, and year)

(Name of person making service)

(Official title)

SUBPOENA *DUCES TECUM*
ISSUED TO HCA INC.
FTC File No. 111-0067

Unless modified by agreement with the staff of the Federal Trade Commission, each specification of this Subpoena *Duces Tecum* requires a complete search of "the Company" as defined in the Definitions and Instructions, wherever those files may be located. If the Company believes that the required search or any other part of this Subpoena may be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss any questions and possible modifications with the Commission representative identified on page 12. All modifications to this Subpoena must be agreed to in writing. You may find it useful to provide the response to Specification 1 of this Subpoena promptly and discuss limiting the required search with the Commission's representative before you begin your search.

SPECIFICATIONS

Submit the following documents, in the form maintained by the Company, prepared or in use by the Company in whole or in part for the relevant service (as defined) in the relevant area (as defined), during the period January 1, 2008, through the present (unless a different time period or geographic area is indicated). If a document is not specific to the relevant area but includes the relevant area (perhaps because it refers to matters generally applicable throughout the United States, or everywhere in the State of Georgia), the documents necessarily apply to the relevant area.

1. Each organization chart and personnel directory and (b) a list of all agents and representatives, including, but not limited to, all attorneys, consultants, investment bankers, product distributors, sales agents, and other persons retained by the Company in any capacity relating to the relevant transaction (other than those retained solely to environmental, tax, human resources, pensions, benefits, ERISA, or OSHA issues).

2. (a) All annual reports and other regularly prepared or periodic financial statements and reports, including but not limited to Medicare cost reports, income and retained income statements; cash flow statements; balance sheets; cost center reports; and departmental, facility, and profitability statements and reports; (b) all documents relating to, quantifying, or identifying contribution margins, fixed costs, or variable costs; and (c) all documents relating to the viability, gross or net margins, retained surplus, ability to obtain financing for capital improvements, or any other aspect of the financial condition of the Company.

3. All documents relating to (a) metrics of cost and revenue per admission, and (b) comparisons of costs, prices, charges, reimbursement rates at other hospitals, wherever located.

4. All data or reports submitted to or received from or by (a) a quality of care rating organization, and (b) a price comparison rating organization.

5. All documents relating to (a) the Company's certificate of need ("CON") applications submitted for its services, and (b) the Company's opposition to any CON application.

6. All documents relating to competition including, but not limited to, market studies, forecasts and surveys, and all other documents relating to: (a) the market share, identification, or competitive position of the Company or any of its competitors, including discussions of service areas, patient origins, and draw areas; (b) the relative strength or weakness of companies; (c) supply and demand conditions; (d) attempts to gain or retain individual patients, contracts with health plans, or physicians' patient admissions; (e) allegations by any person that any hospital is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints, threatened, pending, or completed lawsuits, and federal and state investigations; and (f) any actual or potential effect on the supply, demand, cost, or price of the relevant service as a result of competition from any other possible substitute service.

7. All plans, including but not limited to business plans; short term and long range strategies and objectives; budgets and financial projections; investment banker and other consultant reports; expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, or boards of directors.

8. All documents relating to the Company's or any other person's chargemaster, price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions.

9. All contracts with health plans, now in effect or that were in effect at any time on or after January 1, 2004, along with all documents relating to communications, negotiations for contract terms and contracts, and reimbursement rates, between the Company and (a) health plans, (b) commercial health insurers, (c) health maintenance organizations, (d) preferred provider plans, (e) self-insured employee health benefit plans, (f) employers, (g) unions, and (h) physicians or physician organizations.

10. All documents relating to formal or informal commercial or operational relationships or affiliations of any type between or among the Company and any hospital or physician organization.

11. All documents relating to (a) requirements for entry or expansion, including but not limited to any necessary governmental approval and the time necessary to meet each entry requirement; (b) the total cost required for entry; and (c) possible new entrants.

12. All documents (except engineering and architectural plans and blueprints) relating to any plans of the Company or any other person for the construction of new facilities, the

closing of any existing facilities, or the expansion, conversion, or modification (if such modification has a planned or actual cost of more than $1 million) of current facilities.

13. All documents relating to litigation between the Company and Phoebe Putney Medical Center, Inc., or Phoebe Putney Health System, Inc.

14. All documents relating to any plans of, interest in, or efforts undertaken by the Company or any other person for any acquisition, divestiture, joint venture, alliance, or merger, of any kind.

15. All documents analyzing or discussing the effect of any merger, joint venture, acquisition, or consolidation, including but not limited to the proposed acquisition, on prices, costs, margins, services, service quality, or any other aspect of competitive performance, including but not limited to expected improvements related to: (a) quality of care or safety; (b) the modernization or expansion of hospital facilities; (c) the integration of medical services or staff; and (d) the accessibility of services to the indigent or other populations.

16. All documents (other than documents relating *solely* to environmental, tax, human resources, OSHA, or ERISA issues) relating to the proposed acquisition, including but not limited to (a) the valuation of the assets of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center, and (b) the reasons for the acquisition.

17. Documents sufficient to show the Company's policies and procedures relating to the retention and destruction of documents.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this Subpoena, the following definitions and instructions apply:

A. The term "the Company" means HCA Inc. and Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center, ("Palmyra"), their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of each of the foregoing.

B. The terms "and" and "or" have both conjunctive and disjunctive meanings.

C. The term "documents" means all computer files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term "documents" includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer

systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.

1. The term "documents" excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents relating solely to environmental, tax, human resources, OSHA, or ERISA issues.

2. The term "computer files" includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this Subpoena. The Commission representative will consider modifying this instruction to:

   (a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;

   (b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Commission representatives; or

   (c) include other proposals consistent with Commission policy and the need for information.

D. The terms "each," "any," and "all" mean "each and every."

E. The term "entity" means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or

similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.

F. The term "health plan" means any health insurance or maintenance organization, preferred provider arrangement or organization, managed health care plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental health care plan or insurance of any kind.

G. The term "hospital" means a facility that provides at least some relevant service.

H. The term "minimum viable scale" means the smallest service volume at which average costs equal the price currently charged for the relevant service. Minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

I. The term "operate" with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility's governing board or body, or otherwise directly or indirectly controls the facility or unit.

J. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

K. The term "physician organization" means an integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine, such as a physician group.

L. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

M. The term "proposed acquisition" means the proposed acquisition by the Hospital Authority of Albany - Dougherty County (the "Hospital Authority") of Palmyra Park Hospital, Inc. d/b/a Palmyra Medical Center ("Palmyra"), from HCA Inc., and all related transactions or agreements, including those dealing with (a) the operation of the Palmyra facility after the acquisition, (b) the supervision by the Hospital Authority of the Palmyra assets after the acquisition, and (c) the creation and operation of Phoebe North, Inc. and the supervision of Phoebe North, Inc., and (d) the integration of the assets of Palmyra and/or Phoebe North Inc., into the operations of Phoebe Putney Health System, Inc., or Phoebe Putney Memorial Hospital, Inc.

N. The term "provider" means a facility that provides any relevant service, and includes hospitals, physician group practices, and other healthcare facilities.

O. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating, but not merely referring to.

P. The term "relevant area" means the following counties in the State of Georgia: Atkinson, Baker, Ben Hill, Berrien, Brooks, Calhoun, Chattahoochee, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dooly, Dougherty, Early, Echols, Grady, Houston, Irwin, Lanier, Lee, Lowndes, Macon, Marion, Miller, Mitchell, Quitman, Pulaski, Randolph, Schley, Seminole, Stewart, Sumter, Terrell, Thomas, Tift, Turner, Webster, Wilcox, and Worth.

Q. The term "relevant service" means the provision of general acute care hospital services including (1) inpatient services; (2) outpatient services; (3) emergency room services; (4) gastroenterological services; and (5) diagnostic imaging and scanning services including magnetic resonance imaging ("MRI"). The relevant service encompasses the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities but excludes treatments of mental illness or substance abuse, long-term services such as skilled nursing care, and services provided by a non-employee physician or non-owned physician organizations.

R. The terms "subsidiary," "affiliate," and "joint venture" refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.

S. The term "sunk costs" means the acquisition costs of tangible and intangible assets necessary to provide the relevant service that cannot be recovered through the redeployment of these assets for other uses.

T. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2008, to the present. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company's fiscal year data indicating the twelve month period covered, and provide the Company's best estimate of calendar year data.

U. This Subpoena is continuing in nature and requires the production of all documents responsive to any specification produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this Subpoena.

V. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). The term PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. The term SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company shall substitute for the masked information a unique patient identifier that is different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient; otherwise, the Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

W. Submit all responsive documents as follows:

1. Documents stored in electronic or hard copy format in the ordinary course of business shall be submitted in electronic format, provided that such copies are true, correct, and complete copies of the original documents:

   (a) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text[1] and metadata;

   (b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and

   (c) Submit all hard copy documents in image format accompanied by OCR.

2. For each document submitted in electronic format, include the following metadata fields and information:

   (a) For loose documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and MD5 or SHA Hash value;

   (b) For emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from,

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[1]"Extracted text" is a term of art that refers to the underlying text of a native file that allows the native file to be converted into another searchable format.

CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);

(c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and MD5 or SHA Hash value; and

(d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.

3. If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this Subpoena, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this Subpoena.

4. For each Specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.

5. Submit electronic files and images as follows:

(a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;

(b) For productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats; and

(c) All documents produced in electronic format shall be scanned for and free of viruses. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this Subpoena.

6. All documents responsive to this Subpoena, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

   (a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:

      i. If in their original condition hard copy documents were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover or container from which such documents came; and

      ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;

   (b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

   (c) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);

   (d) Shall be marked on each page with corporate identification and consecutive document control numbers;

   (e) Shall be accompanied by an affidavit of an officer of the Company stating that any copies submitted in lieu of originals are true, correct and complete copies of the original documents; and

   (f) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s),

provide the index both as a printed hard copy and in machine-readable form (provided that Commission representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Commission representative will provide a sample index upon request.

X. If a document is withheld from production based upon a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm. Denote all attorneys with an asterisk and state the representation of the attorney at the time the documents was created. Describe the subject matter of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the claimed privilege. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based upon a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

1. The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made.

2. Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this Subpoena.

3. For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

   (a) The Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

   (b) The Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

   (c) The Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

4. The Company retains all privileged documents that are responsive to this Subpoena until the completion of any investigation and administrative or court proceedings of the relevant transaction.

5. The Commission retains the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Z. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy as disclosed or described in response to Specification 17 of this Subpoena, but the Company has reason to believe have been in existence, state the

circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

20. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this Subpoena and produce a copy of all instructions prepared by the Company relating to the steps taken to respond to the Subpoena. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the person(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

AA. In order for the Company's response to this Subpoena to be complete, the attached certification form must be executed by the official supervising compliance, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this Subpoena or suggestions for possible modifications should be directed to Goldie Walker at (202) 326-2919. Address the response to this Subpoena to the attention of Ms. Goldie Walker, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and have it delivered between 8:30 a.m. and 5:00 p.m. on any business day at the New Jersey Avenue address.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN A NONPUBLIC INVESTIGATION

File No. 111 0067

Nature and Scope of Investigation:

To determine whether the proposed acquisition by The Hospital Authority of Albany-Dougherty County and/or Phoebe Putney Health System, Inc. of Palmyra Park Hospital, Inc. from HCA, Inc. is in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the proposed acquisition, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1 *et seq.* and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Issued: February 8, 2011

EXHIBIT F

SIMPSON THACHER & BARTLETT LLP

425 LEXINGTON AVENUE
NEW YORK, N.Y. 10017-3954
(212) 455-2000

FACSIMILE (212) 455-2502

DIRECT DIAL NUMBER
212-455-3472

E-MAIL ADDRESS
JRJE@STBLAW.COM

February 22, 2011

VIA EMAIL

Goldie V. Walker, Esq.
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, DC 20580

Re: Proposed Acquisition by the Hospital Authority of Albany-Dougherty County of Palmyra Park Medical Center, Inc.; FTC File No. 111-0067

Dear Goldie:

Thank you and your colleagues for speaking with us on Friday, February 18, 2011 about the Subpoena *Duces Tecum* ("SDT") and Civil Investigative Demand ("CID") issued to HCA, Inc. ("HCA" or "the Company") on February 15, 2011 in relation to the acquisition of Palmyra Park Hospital, Inc. ("Palmyra") by the Hospital Authority of Albany-Dougherty County ("Hospital Authority"). This letter is meant to summarize our discussions and the modifications to the SDT and CID we requested on behalf of HCA in its efforts to comply with the SDT and CID by the currently specified return date of February 28, 2011, or the alternative return date we requested of March 15, 2011.

We indicated to you that it is not physically or technically possible to comply with the SDT and CID as written, without any modifications, by February 28 given the volume of information requested, the nature of the information requested, the size of the Company, and the short time frame. The February 28 return date gives HCA only 14 days to comply with both the SDT and CID, one day of which is a national holiday on which most businesses are closed. The SDT contains 17 Specifications that date back over three years or longer and will require searching for, processing and reviewing an enormous volume of documents. This process can take weeks, if not months, and once relevant documents have been located, it can take another 4 days or more just to create a production in the format required by the FTC's electronic production guidelines. The CID contains over 80 requests for information and data (including subparts of Specifications), many of which date back over 3 years and would require the Company

Even if the FTC agrees to all of the modifications we proposed on the call, and even with the resources available to us, we still don't believe that it is possible to fully comply with the SDT and CID by February 28. While we are doing everything possible to achieve compliance by that date and do believe that we will be able to produce a meaningful percentage of the documents called for by the SDT and some of the data and information requested by the CID by February 28, full compliance cannot be achieved.[1] Therefore, we have requested an alternative return date of March 15, 2011 for the SDT and CID, and to enable compliance by the alternative date, have requested a limitation on custodians to those we discussed on the call, as well as proposed a number of modifications.[2]

Specifically, we requested that the definition of "Company" in both the SDT and CID be narrowed in some manner to include only the HCA, Inc. corporate entity and Palmyra. As currently written, the CID and SDT ask for information from every domestic and foreign predecessor, division, subsidiary, joint venture, affiliation, partnership, etc., of HCA. HCA is a large company with hundreds of hospitals and freestanding surgery centers in 20 states and Great Britain, almost all of which have no relation to the relevant area in this matter or the transaction under investigation.[3]

With respect to the SDT, we requested that the custodians from whom we are expected to pull documents be limited to the list of twelve people we highlighted on the call. We believe that these are the people in the Company who will have the vast majority of meaningful documents relevant to the SDT. For every custodian added, the burden on HCA and Palmyra is greatly increased both in terms of time and cost, particularly in this age of email and electronic discovery. In our experience, for every document custodian added, we typically have to review an additional 300,000+ pages, which can take an experienced reviewer over 500 hours to complete. To the extent that there are more targeted requests for specific documents, such as regularly prepared financial statements, data/reports submitted to quality ratings agencies, pleadings from the litigation involving Palmyra and other Specifications like these that do not call for "all documents relating to..." , we indicated that we would find and submit those documents to you irrespective of custodian.

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1 We are simultaneously working on responding to a separate information request from the FTC received on February 4, 2011, to which we voluntarily agreed to respond prior to having been issued the CID and SDT. We currently expect to be able to fully respond to that request by February 28, 2011.

2 Even with modifications, completion of the SDT and CID by March 15, 2011 will require and enormous effort. We view the CID and SDT as more burdensome than a standard Second Request, which typically takes from 10 to 20 weeks to complete.

3 For the purpose of this letter, we use the terms "relevant service" and "relevant area" as such terms have been defined by the FTC in Definitions P and Q of the SDT and O and P of the CID. The use of these terms in no way indicates that the Company concedes that these terms, as defined, constitute relevant antitrust product or geographic markets.

Likewise, we requested for a number of Specifications in the SDT that they be limited to Palmyra, the relevant area, and/or HCA's operations in the relevant area for the same reasons that we requested a modification to the definition of Company.[4] Finally, we also requested that Specification 3 be modified to read "documents sufficient to show" rather than "all documents relating to."

With respect to our modification requests related to the CID, which asks for data and information, like the SDT, we asked that a number of the Specifications be limited to Palmyra, the relevant area, and/or HCA's operations in the relevant area to avoid the need to compile data or information that does not pertain in any way to the relevant area or the transaction under investigation.[5]

In addition, we requested that Specification 4(f)'s requirement to provide "any diagnosis codes" for every patient transferred from another hospital to Palmyra since January 1, 2008, be limited to the "final diagnosis code" for each patient. This patient dataset will be voluminous and there can be a large number of different diagnosis codes per patient admission, which will greatly increase the volume of the data. We did not make the same request for Specification 4(g), which asks for the same diagnosis code information for every patient transferred to another hospital from Palmyra since January 1, 2008, and should have done so. Thus, we are requesting this modification to Specification 4(g) at this time.

Specification 6 also requests a vast amount of patient data. Specifically, it asks for over 18 different data points, such as age, gender, breakdown of hospital charges by service, diagnosis and procedure codes, name of health plan, charges to health plan, etc., for every single outpatient and inpatient of Palmyra since 2006. With respect to this Specification, we asked that it be limited to January 1, 2008 forward,

Even going back to January 2008, HCA will have to create a database in order to compile and submit this information due to the size.

Finally, we requested that the requirement of Specification 7 that every regularly prepared periodic financial statement, budget, profit and loss statement, customer or departmental profitability report, etc., be described in a narrative, as well as produced, be modified to eliminate the need to draft a narrative to accompany the documents the FTC will be receiving. You indicated that the purpose of the request is to ensure that the FTC can interpret terms used in the reports appropriately and understand the reports when reviewing them. You suggested that it may be acceptable to grant this modification if we remain available to you to respond to specific questions that may arise during the FTC's review of the materials. While we did not give you a definitive response to this on our call, at this time we do agree to be available to respond in a timely manner to any such questions that may arise.

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[4] We made this request for Specifications 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15.

[5] We made this request for Specifications 1, 2, 3, 4(j), 5(a), 5(c), 7 and 12.

You asked a number of questions about various people in the HCA organization and about specific types of documents in which you are interested. In addition, you indicated your willingness to work with us in facilitating a timely response to the CID and SDT, and responded that you would take all of our requests under consideration and get back to us as soon as you could, most likely on Tuesday, February 22, given that the FTC's offices are closed on Monday, February 21 for Presidents' Day. You noted that with respect to data requests you would need to ensure that the FTC economist on the matter was comfortable with the modifications. In addition, you asked whether HCA would be submitting any of the information and documents requested by the FTC in two previous letters to the outside counsel representing HCA. We responded that we would be submitting materials responsive to the February 4, 2011 letter from Joseph Brownman of the FTC to Lee VanVoorhis of Weil, Gotshal & Manges and Kevin Arquit from Simpson, Thacher & Bartlett, and currently expect to do so by February 28, 2011, the date specified in the letter for submission of responsive materials.

Finally, we also had a brief discussion about the FTC's electronic production guidelines and the technical formats in which the documents would be produced. In this respect we requested a few modifications to the FTC's requirements related to the metadata that is provided with each document. You agreed to our requested modifications.

Please let us know if this does not comport to your understanding of our discussion. We look forward to speaking with you on Tuesday.

Very truly yours,

Jennifer Rie

cc: Kevin Arquit, STB
Aimee Goldstein, STB
Bob Waterman, HCA
Joe Sowell, HCA
Mark Rader, Palmyra
Mark Horoschak, Womble Carlyle Sandridge & Rice, PLLC
Scott Rayson, Waller Lansden Dortch & Davis, LLP