UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of

Methodist Le Bonheur Healthcare
a corporation,

and

Tenet Healthcare Corporation,
a corporation.

Docket No. 9396

PUBLIC VERSION

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act ("FTC Act"), and by the virtue of the authority vested in it by the FTC Act, the Federal Trade Commission ("Commission"), having reason to believe that Respondents Methodist Le Bonheur Healthcare ("Methodist") and Tenet Healthcare Corporation ("Tenet"), have executed an asset sale agreement in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, which if consummated would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint pursuant to Section 5(b) of the FTC Act, 15 U.S.C. § 45(b), and Section 11(b) of the Clayton Act, 15 U.S.C. § 21(b), stating its charges as follows:

I.

NATURE OF THE CASE

1. Pursuant to an asset sale agreement, Methodist plans to acquire certain healthcare facilities, assets, and operations, including Saint Francis Hospital – Memphis ("Saint Francis-Memphis") and Saint Francis Hospital – Bartlett ("Saint Francis-Bartlett") (collectively, "Saint Francis") from Tenet and its subsidiaries (the "Proposed Transaction") for $350 million. Methodist and Saint Francis are two of only four providers of general acute care ("GAC") inpatient hospital services in the Memphis Metropolitan Statistical Area ("the Memphis Area"). The Proposed Transaction will substantially lessen competition in the market for GAC inpatient hospital services sold and provided to commercial insurers and their insured members ("GAC inpatient hospital services"). The relevant geographic market in which to assess the competitive impact of the Proposed Transaction is the Memphis Area, and includes all the GAC inpatient

hospitals in and around Memphis.

2. Only four hospital systems currently provide GAC inpatient hospital services in the Memphis Area; the Proposed Transaction would reduce that number to three and result in a single entity with control of seven out of twelve GAC inpatient hospitals in the Memphis Area.

3. Following the Proposed Transaction, Methodist would control over 50 percent of the market for GAC inpatient hospital services in the Memphis Area. Only one other major hospital system, Baptist Memorial Health Care ("Baptist"), will meaningfully compete with Respondents to provide GAC inpatient hospital services to commercial insurers in the Memphis Area. Regional One Health ("Regional One") also operates a single GAC inpatient hospital in the Memphis Area, but it provides a more limited set of services and primarily serves a patient population that lacks commercial insurance.

4. Methodist and Saint Francis are close competitors today, directly competing with one another both for inclusion in insurers' networks and for patients. The Proposed Transaction would immediately eliminate this direct competition, and would increase Methodist's bargaining leverage with commercial insurers, enhancing Methodist's ability to negotiate more favorable reimbursement terms, including reimbursement rates (*i.e.*, prices). Commercial insurers will have to pass on at least some of those higher healthcare costs to employers and their insurance plan members in the form of increased premiums, co-pays, deductibles, and other out-of-pocket expenses. "Self-insured" employers that pay the cost of their employees' healthcare claims directly will bear the full and immediate burden of higher reimbursement rates and other less favorable terms. In addition to competing to be in insurers' networks by offering more favorable price and reimbursement terms to commercial insurers, Methodist and Saint Francis also compete with each other to attract patients by improving quality, expanding services offerings, and increasing access for patients in the Memphis Area. This non-price competition would also be lost post-transaction.

5. The Proposed Transaction will substantially lessen competition in GAC inpatient hospital services in the Memphis Area and cause significant harm to consumers. If Respondents consummate the Proposed Transaction, healthcare costs will rise, and the incentive to expand service offerings, invest in technology, improve access to care, and focus on the quality of healthcare provided in the Memphis Area will diminish.

6. Entry or significant expansion by other GAC inpatient hospitals is not likely, nor will it be timely or sufficient to offset the adverse competitive effects that will result from the Proposed Transaction.

7. Respondents have not substantiated verifiable, merger-specific efficiencies that would be sufficient to rebut the strong presumption of harm and other evidence of the Proposed Transaction's likely significant anticompetitive effects.

II.

JURISDICTION

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

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

III.

BACKGROUND

A.

Respondents

10. Respondent Methodist, the largest healthcare provider in the Memphis Area based on GAC inpatient admissions, is a not-for-profit, faith-based health system headquartered in Memphis, Tennessee. Methodist operates four GAC inpatient hospitals and one children's hospital in Shelby County, Tennessee, as well as one GAC inpatient hospital in DeSoto County, Mississippi. Methodist's flagship hospital, Methodist University Hospital, is located in Memphis. Methodist North Hospital, Methodist South Hospital, and Le Bonheur Children's Hospital are also located in Memphis. Methodist Le Bonheur Germantown Hospital is located in Germantown, Tennessee, to the east of Memphis, and Methodist Olive Branch Hospital is located in Olive Branch, Mississippi, about 23 miles from Memphis. Methodist has 1,703 licensed beds across all its locations. Methodist also operates 84 outpatient facilities, employs approximately 280 physicians, and aligns with approximately 216 physicians. In fiscal year 2018, Methodist generated approximately $2 billion in revenue and approximately $81 million in operating income.

11. Respondent Tenet is a national for-profit health system headquartered in Dallas, Texas. Tenet operates 65 acute care and specialty hospitals and over 500 outpatient centers and other healthcare facilities. Tenet employs approximately 110,000 employees and garnered approximately $18.5 billion in revenue in 2019.

12. Tenet and its subsidiaries operate two GAC inpatient hospitals in the Memphis Area: Saint Francis-Memphis and Saint Francis-Bartlett. Saint Francis-Memphis is a 479-bed acute care hospital located in Memphis, and Saint Francis-Bartlett is a 156-bed acute care hospital in Bartlett, Tennessee, a northern suburb of Memphis. Tenet also operates six MedPost urgent care centers and three outpatient imaging centers in the Memphis area, and employs approximately 62 physicians in Memphis. In fiscal year 2018, Saint Francis-Memphis and Saint Francis-Bartlett generated $270 million and $143.9 million in net patient revenue, respectively.

B.

The Proposed Transaction

13. Tenet, via its subsidiaries, entered into a definitive asset sale agreement with Methodist on December 12, 2019, pursuant to which Methodist will acquire the assets and operating rights associated with Saint Francis-Memphis and St. Francis-Bartlett, their associated physician practices and urgent care centers, and other ancillary providers, for an aggregated purchase price of $350 million, subject to adjustment.

IV.

THE RELEVANT SERVICE MARKET

14. The relevant service market is GAC inpatient hospital services sold and provided to commercial insurers and their insured members. This service market encompasses a broad cluster of medical and surgical diagnostic and treatment services offered by both Methodist and Saint Francis to patients age 18 and older that require an overnight hospital stay. GAC inpatient hospital services include, but are not limited to, many emergency services, internal medicine services, and surgical procedures offered by both Respondents.

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

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

17. The GAC inpatient hospital services market does not include services related to psychiatric care, substance abuse, or rehabilitation services. Furthermore, the GAC inpatient hospital services market does not include services provided to patients under the age of 18. These services are offered by a different set of competitors under different competitive conditions than GAC inpatient hospital services in the Memphis Area and are not substitutes for them.

V.

THE RELEVANT GEOGRAPHIC MARKET

18. The relevant geographic market in which to analyze the effects of the Proposed Transaction is the Memphis Metropolitan Statistical Area, and includes all the GAC inpatient hospitals in and around Memphis. The Memphis Area includes Fayette, Shelby, and Tipton counties in Tennessee, DeSoto, Marshall, Tate, and Tunica counties in Mississippi, and Crittenden County in Arkansas.

19. The appropriate geographic market for analyzing the Proposed Transaction is the area where a hypothetical monopolist of the relevant services could profitably impose a small but significant and non-transitory increase in price ("SSNIP") on the relevant services. If a hypothetical monopolist of the relevant services could profitably impose a SSNIP, the boundaries of the geographic area constitute an appropriate geographic market.

20. Memphis Area residents strongly prefer to obtain GAC inpatient hospital services close to where they live. Therefore, it would be very difficult for a commercial insurer to successfully market a health plan to patients in the Memphis Area that excluded all hospitals located within the Memphis Area. Because a hypothetical monopolist of all hospitals in the Memphis Area that provide GAC inpatient hospital services could impose a SSNIP on insurers, an area no broader than the Memphis Area is a relevant geographic market in which to analyze the Proposed Transaction.

21. The Memphis Area is also the main area of competition between Methodist and Saint Francis for GAC inpatient hospital services. Methodist and Saint Francis each analyze competition within the Memphis Area and identify hospitals within the Memphis Area as their competitors.

VI.

MARKET STRUCTURE AND THE PROPOSED TRANSACTION'S PRESUMPTIVE ILLEGALITY

22. The Proposed Transaction will substantially increase concentration in an already highly concentrated market for GAC inpatient hospital services in the Memphis Area.

23. Based on commercial GAC inpatient admissions for patients seeking care at Memphis Area hospitals, post-transaction, Methodist would control more than 50 percent of GAC inpatient hospital services in the Memphis Area.

24. The 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines") provide a framework for interpreting and applying antitrust laws. The Merger Guidelines explain that transactions are likely to create or enhance market power—and are presumptively unlawful—based on the transaction's impact on the Herfindahl-Hirschman Index ("HHI"), which courts and antitrust agencies commonly use to measure market

concentration. Specifically, a transaction is presumptively unlawful if it increases the HHI by more than 200 points and results in a post-acquisition HHI above 2,500 points.

25. The Proposed Transaction would increase the HHI in this market by well over 1,000 points, resulting in a post-transaction HHI of over 4,500, far exceeding the threshold over which the Proposed Transaction is presumed likely to create or enhance market power and to be presumptively unlawful. As such, the Proposed Transaction is presumptively unlawful.

VII.

ANTICOMPETITIVE EFFECTS

A.

Competition Between Hospitals Benefits Consumers

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

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

28. Health plan members typically pay far less to access in-network hospitals than those that are out-of-network. In-network status thus benefits hospitals because, all else being equal, an in-network hospital will attract more patients from a particular health plan than an out-of-network one. This dynamic motivates hospitals to offer lower rates and other more favorable terms to commercial insurers to win inclusion in their networks.

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

30. A critical determinant of the relative bargaining positions of a hospital and a commercial insurer during contract negotiations is whether other, nearby comparable hospitals, or combinations of hospitals, are available to the commercial insurer and its health plan members as alternatives in the event of a negotiating impasse. Alternative hospitals limit a hospital's bargaining leverage and constrain its ability to obtain more favorable reimbursement terms from commercial insurers. The more attractive alternative hospitals are to a commercial insurer's health plan members in a local area, the greater the constraint on a hospital's bargaining

leverage. Where there are fewer meaningful alternatives, a hospital will have greater bargaining leverage to demand and obtain higher reimbursement rates and other more favorable reimbursement terms.

31. These bargaining dynamics apply to both "broad" and "narrow" network health plan negotiations. Broad network health plans are health plans that include most or all hospitals in an area. Narrow network health plans are health plans that do not include all area hospitals and are usually marketed at lower prices than broad health plans, which include most or all hospitals. To the extent that commercial insurers are willing to create, and members are willing to purchase, narrow network health plans that limit the number of providers included in the network, hospital providers may be willing to offer lower rates or provide more favorable terms in order to be included within, rather than excluded from, the narrow network and increase overall patient volume. The availability of comparable and proximate hospitals, or a combination of hospitals, with which an insurer could create an alternative narrow network limits the leverage that the bargaining hospital has during contract negotiations relating to narrow networks.

32. A merger between hospitals that are substitutes in the eyes of commercial insurers and their health plan members tends to increase the merged entity's bargaining leverage. Similarly, a merger between hospitals also tends to increase the merged entity's bargaining leverage when one of the merging parties serves as a significant component of a network that is a close substitute for the other merging party in the eyes of commercial insurers and their members. Such mergers lead to higher reimbursement rates by eliminating an available alternative for commercial insurers. This increase in leverage is greater when the merging hospitals are closer substitutes for (and competitors to) each other; however, the merging hospitals need not be each other's closest competitors in order for a merger to increase the merged entity's bargaining leverage.

33. Changes in the reimbursement terms negotiated between a hospital and a commercial insurer, including increases in reimbursement rates, significantly impact the commercial insurer's health plan members. "Fully-insured" employers pay premiums to commercial insurers—and employees pay premiums, co-pays, and deductibles—in exchange for the commercial insurer assuming financial responsibility for paying hospital costs generated by the employees' use of hospital services. When hospital rates increase, commercial insurers generally pass on a significant portion of these increased rates to their fully-insured customers in the form of higher premiums, co-pays, and deductibles. "Self-insured" employers rely on a commercial insurer for access to its health plan provider networks and negotiated rates, but these employers pay the cost of their employees' healthcare claims directly and bear the full and immediate burden of any rate increase in the healthcare services used by their employees. Employees may bear some portion of the increased cost through increased premiums, co-pays, and deductibles.

34. In the second stage of hospital competition, hospitals compete to attract patients to their facilities. Because health plan members often face similar out-of-pocket costs for in-network hospitals, hospitals in the same network compete to attract patients on non-price features, including, but not limited to, quality of care, access to services and technology, reputation, physicians and faculty members, amenities, convenience, and patient satisfaction. Hospitals compete on these non-price dimensions to attract all patients, regardless of whether they are

covered by commercial insurance (including Medicare Advantage and Medicaid Managed Care), traditional Medicare and Medicaid, or are patients without any insurance. A merger of competing hospitals eliminates this competition for patients and reduces the merged entity's incentive to improve and maintain service, access, and quality.

B.

The Proposed Transaction Would Eliminate Beneficial Head-to-Head Competition between the Respondents

35. Methodist and Saint Francis are close competitors for GAC inpatient hospital services. Methodist's internal documents refer to Saint Francis as one of only two "direct competitors" and Saint Francis's internal documents identify Methodist as one of its two closest competitors. [redacted] Methodist and Saint Francis also closely track each other's quality scores, advertising, and brand recognition. In addition, they regularly oppose each other's certificate of need ("CON") applications, seeking to stifle competitively beneficial technology investments or facility expansions that might draw patients from one to the other. The Proposed Transaction would eliminate this significant head-to-head competition between Respondents, which at present incentivizes the Respondents to keep prices lower and quality of care higher than they would without this competition.

36. Economic analysis confirms that Methodist and Saint Francis are close competitors for GAC inpatient hospital services. Diversion analysis is an economic tool that uses data on where patients receive hospital services to determine the extent to which hospitals are substitutes. Diversion analysis shows that if Saint Francis's hospitals were to become unavailable to patients for GAC inpatient services, a majority of patients that previously went to Saint Francis would seek care at a Methodist hospital. Likewise, if Methodist hospitals were to become unavailable to patients for GAC inpatient hospital services, a significant fraction of patients that previously went to one of Methodist's hospitals would receive care at one of Saint Francis's hospitals.

37. Today, this close head-to-head competition between the Respondents incentivizes them to keep prices lower and quality of care higher than they would without this competition.

C.

The Proposed Transaction Would Increase Methodist's Bargaining Leverage

38. The reduction in competition caused by the Proposed Transaction would increase Methodist's bargaining leverage in contract negotiations with commercial insurers. This increase in bargaining leverage would apply to contract negotiations for both narrow and broad network health plans, and would result in Methodist commanding higher reimbursement rates and more favorable reimbursement terms.

39. In the Memphis Area, commercial health insurers may offer a health plan that provides in-network access to all four GAC hospital systems, and/or one or more narrow network health

plans that provide in-network access to a subset of the four GAC hospital systems. Narrow network and "tiered" health plans offer customers a tradeoff by including fewer participating hospitals (or fewer participating hospitals in a preferred benefit tier), but often at significantly discounted prices relative to broader provider networks. Hospitals are willing to accept lower reimbursement rates to participate in narrow and tiered networks based on the expectation that they will gain increased patient volume.

40. Narrow network health plans are prevalent in the Memphis Area. Today, commercial insurers in the Memphis Area can, and most do, offer a narrow network that includes one of the two largest provider systems in the Memphis Area – Methodist, or the second largest provider, Baptist – as well as Saint Francis and/or Regional One.

41. Competition between Methodist and Saint Francis to be in-network providers and to exclude each other from commercial insurance networks directly drives down reimbursement rates in the Memphis Area today. Methodist has provided price concessions to commercial insurers to exclude Saint Francis from narrow network products or otherwise disadvantage Saint Francis. Such competition would be eliminated as a result of the Proposed Transaction, thereby reducing Methodist's incentive to offer lower rates and leading to increased prices. Acquiring Saint Francis will enhance Methodist's leverage when negotiating reimbursement rates and terms with commercial insurers and lead to higher reimbursement rates and terms that are more favorable to Methodist.

42. The Proposed Transaction would also increase Methodist's bargaining leverage vis-à-vis commercial insurers by weakening commercial insurers' ability to offer an attractive narrow network product that excludes Methodist. Today, an insurer can build a narrow network product that excludes Methodist and offers in-network access to Baptist, Saint Francis, and Regional One. Post-transaction, if an insurer sought to build a narrow network product excluding the combined Methodist/Saint Francis, it could offer (at most) in-network access to Baptist and Regional One. Removing Saint Francis as a component of such a network would reduce the attractiveness of the network, and would therefore increase Methodist's bargaining leverage in contract negotiations with commercial insurers.

D.

The Proposed Transaction Would Eliminate Vital Quality and Service Competition

43. Methodist and Saint Francis compete with one another to attract patients, which incentivizes them to improve the quality of care they provide, enhance access, recruit high quality physicians, and expand their service offerings. The Proposed Transaction would eliminate this competition, which has provided GAC inpatient hospital services patients in the Memphis Area with higher quality care, better access to care, and more extensive healthcare service offerings.

44. Methodist and Saint Francis track and respond to one another's quality achievements and hiring decisions. Methodist tracks Saint Francis's quality recognitions and considers these achievements when developing its own strategy. In response to learning that Saint Francis

Bartlett was the only local hospital to receive an "A" ranking from the Leapfrog Group, an organization that assesses hospital quality, a Methodist employee observed that this report [redacted] Saint Francis has also focused on improving patient access and experience to retain volume. For example, in 2018, after Methodist hired a bariatric surgeon away from Saint Francis to help launch Methodist's bariatric program, Saint Francis focused on improving services to patients and access to operating rooms in an attempt to retain patients. Furthermore, Saint Francis has invested in technology and expanded or added services lines in order to better compete with Methodist (as well as Baptist). For example, Tenet invested in a da Vinci Xi Robot to better compete with Methodist and Baptist for surgical patients, aiming in particular to shift surgery volumes from locations such as Methodist Germantown hospital to Saint Francis. Saint Francis also proposed to recruit orthopedic surgeons, market its robotic surgery options, and potentially add a robotic surgery option for Saint Francis-Bartlett in order to convince patients to go to Saint Francis rather than other hospitals.

45. Patients benefit from this direct non-price competition. The Proposed Transaction will diminish the combined firm's incentive to compete on quality of care, access to care, and service offerings to the detriment of all patients who use these hospitals, including commercially insured, Medicare, Medicaid, and self-pay patients.

VIII.

ENTRY BARRIERS

46. Neither entry by new market participants nor expansion by current market participants is likely to deter or counteract the Proposed Transaction's likely harm to competition for GAC inpatient hospital services in the Memphis Area.

47. New entry into GAC inpatient hospital services or significant expansion by current GAC inpatient hospital providers in the Memphis Area is not likely, nor would such entry or expansion be timely or sufficient to offset the Proposed Transaction's likely harmful competitive effects. Entry or significant expansion in the Memphis Area is unlikely due to high costs and risks associated with constructing and opening GAC hospitals or significantly expanding GAC inpatient hospital services in Tennessee. Construction of a new GAC hospital or substantial expansion of an existing one would involve high costs and significant financial risk, including the time and resources to conduct studies, develop plans, acquire land or repurpose a facility, obtain regulatory approvals, including a CON, and build and open the facility.

48. Even if *de novo* hospital construction or significant expansion by incumbent providers were likely, such entry or significant expansion would not be timely. In addition to the time and costs associated with planning and constructing a hospital or significantly expanding existing facilities, Tennessee's CON regulations pose a significant barrier to entry. Tennessee's CON regulations require anyone seeking to build a new hospital or modify an existing hospital or healthcare facility, as well as hospitals seeking to add licensed beds by more than 10 percent every three years per specific bed category, to undergo an extensive application process and justify the need for such additions. Obtaining CON approval is a time-consuming process and

there is no guarantee such approval will be granted.

49. Even a successful entrant would be unlikely to counteract the loss of competition resulting from the Proposed Transaction, as a new provider would face significant challenges to replicate Saint Francis's competitiveness and reputation in the Memphis Area.

IX.

EFFICIENCIES

50. Respondents have not substantiated verifiable, merger-specific efficiencies that would be sufficient to rebut the strong presumption and evidence of the Proposed Transaction's likely significant anticompetitive effects.

X.

VIOLATION

COUNT I – ILLEGAL AGREEMENT

51. The allegations of Paragraphs 1 through 50 above are incorporated by reference as though fully set forth herein.

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

COUNT II – ILLEGAL ACQUISITION

53. The allegations of Paragraphs 1 through 50 above are incorporated by reference as though fully set forth.

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

NOTICE

Notice is hereby given to the Respondents that the eighteenth day of May, 2021, at 10:00 a.m. Eastern is hereby fixed as the time, and the Federal Trade Commission offices at 600 Pennsylvania Avenue, N.W., Room 532, Washington, DC, 20580, as the place, when and where an evidentiary hearing will be had before an Administrative Law Judge of the Federal Trade Commission, on the charges set forth in this complaint, at which time and place you will have the right under the Federal Trade Commission Act and the Clayton Act to appear and show cause why an order should not be entered requiring you to cease and desist from the violations of law charged in the complaint.

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

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

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

NOTICE OF CONTEMPLATED RELIEF

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

1. If the Proposed Transaction is consummated, divestiture or reconstitution of all associated and necessary assets, in a manner that restores two or more distinct and separate, viable and independent businesses in the relevant market, with the ability to offer such products and services as Methodist and Tenet were offering and planning to offer prior to the Proposed Transaction.

2. A prohibition against any transaction between Methodist and Tenet that combines their businesses, or any part of their businesses or operations, in the relevant market, except as may be approved by the Commission.

3. A requirement that, for a period of time, Methodist and Tenet provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses, or any part of their businesses or operations, in the relevant market, as defined in paragraphs 14 through 21 of this complaint, with any other company operating in the relevant market.

4. A requirement to file periodic compliance reports with the Commission.

5. Any other relief appropriate to correct or remedy the anticompetitive effects of the transaction or to restore Tenet as viable, independent competitor in the relevant market.

IN WITNESS WHEREOF, the Federal Trade Commission has caused this complaint to be signed by its Secretary and its official seal to be hereto affixed, at Washington, D.C., this twelfth day of November, 2020.

By the Commission.

April J. Tabor
Acting Secretary

SEAL