



together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft of complaint, other than jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to divest and to cease and desist, and other relief in disposition of the proceedings, and (2) make information public with respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. The proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent has read the proposed complaint and order contemplated hereby. The proposed respondent understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. The proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I.

**IT IS ORDERED THAT**, as used in this order, the following definitions shall apply:

A. "Tenet" or "respondent" means Tenet Healthcare Corporation; its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Tenet Healthcare Corporation; and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "OrNda" means OrNda Healthcorp; its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by OrNda Healthcorp; and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. The "Acquisition" means the transaction contemplated by the October 16, 1996 Agreement and Plan of Merger between Tenet and OrNda, pursuant to which OrNda will become a wholly-owned subsidiary of Tenet.

E. "Acute care hospital" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities.

F. "Affiliate" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

G. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

H. "Relevant area" means the county of San Luis Obispo in California.

I. The "Schedule A assets" mean the assets identified in the attached Schedule A.

J. The "Schedule B assets" mean the assets identified in the attached Schedule B.

K. "Monarch Health Systems" or "Monarch" means Monarch Medical Alliance, Inc., doing business as Monarch Health Systems (a corporation with its headquarters in Santa Barbara, California), its subsidiaries, and their successors and assigns.

L. "Assets and Businesses" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. all real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements, and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");
2. all contracts and agreements with physicians, other health care providers, unions, third party payers, health maintenance organizations and other health plans, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees (collectively, the "Contracts");
3. all machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as are used in the ordinary course of business during the time that Tenet owns the assets) (collectively, the "Personal Property");
4. all research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes, and

quality control data (collectively, the "Intangible Personal Property");

5. all books, records, and files, excluding, however, the corporate minute books and tax records of Tenet, OrNda, and their affiliates; and
6. all prepaid expenses.

M. To "operate" an acute care hospital means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

N. To "acquire" an acute care hospital means, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. To acquire the whole or any part of the assets used or previously used within the last two years (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;
2. To acquire the whole or any part of the stock, share capital, equity, or other interest in any person engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;
3. To acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of an acute care hospital; or
4. To enter into any other arrangement to obtain direct or indirect ownership, management, or control of an acute care hospital or any part thereof, including, but not limited to, a lease of or management contract for an acute care hospital.

II.

**IT IS FURTHER ORDERED** that:

A. Respondent shall divest, absolutely and in good faith, on or before August 1, 1997, the Schedule A assets.

B. Respondent shall also divest, absolutely and in good faith, on or before August 1, 1997, such additional ancillary assets and businesses, and effect such arrangements, as are necessary to assure the marketability, independence, viability, and competitiveness of French Hospital Medical Center.

C. Respondent shall also divest, absolutely and in good faith, on or before August 1, 1997, all of its stock in Monarch Health Systems. The Monarch Health Systems stock may be, but need not be, divested to the same person to whom the Schedule A assets are divested.

D. The purpose of the foregoing divestitures is to ensure the continuation of French Hospital Medical Center as an ongoing, independent, and viable acute care hospital, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

E. Respondent shall divest the Schedule A assets, the Monarch Health Systems stock, and any additional assets that must be divested pursuant to Paragraph II.B. above, only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that respondent may divest the Monarch Health Systems stock, or that stock together with the loan agreement identified in Schedule A, without the prior approval of the Commission, to a person other than respondent in connection with that person's acquisition of all, or substantially all, Monarch Health Systems stock.

F. Respondent shall comply with all terms of the Agreement to Hold Separate concerning the Schedule A assets, the Schedule B assets, and the Monarch Health Systems stock, attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this Paragraph II or until such other time as said Hold Separate provides.

G. Pending the divestitures required by this Paragraph II, respondent shall take such actions as are necessary to maintain

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seeking civil penal ties or any other relief available to them for any failure by the respondent to comply with this order.

D. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. or Paragraph III.B. of this order, the respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.
2. Subject to the prior approval of the Commission (except with respect to any divestiture of Monarch Health Systems stock which Paragraph II.E. permits to be made without Commission approval), the trustee shall serve as an agent of the Commission and shall have the exclusive power and authority to divest (a) the Schedule A assets and, as necessary, some or all of the Schedule B assets, if the trustee is appointed pursuant to Paragraph III.A., and (b) respondent's Monarch Health Systems stock, if the trustee is appointed pursuant to Paragraph III.B.
3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.D.3 to accomplish the divestitures, which shall be subject to the prior approval of the Commission (with the exception set forth in Paragraph III.D.2). If, however, at the end of the twelve -month

period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided, however, that the Commission may extend this period only two (2) times, for up to twelve (12) months each time.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets he or she is to divest, as well as to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request, and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any

of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the sale and all expenses incurred.

After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule A assets (if the trustee is appointed pursuant to Paragraph III.A.) and the Monarch Health Systems stock (if the trustee is appointed pursuant to Paragraph III.B.).

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the manner as provided in Paragraph III.A. or Paragraph III.B. of this order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this order.
11. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of French Hospital Medical Center.

12. The trustee shall have no obligation or authority to operate or maintain the Schedule A assets, or the Schedule B assets, or to take any actions (other than in furtherance of divestiture) relating to the Monarch Health Systems stock.
13. The trustee shall report in writing to the respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

**IV.**

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date this order becomes final, respondent shall not,

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information and documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification pursuant to this Paragraph IV, or pursuant to Paragraph II.H. of this order, shall not be required for:

- (1) the establishment by respondent of an acute care hospital in the relevant area: (a) that is a replacement for an existing acute care hospital, if that facility is operated by respondent and is not required to be divested pursuant to Paragraph II of this order; or (b) that is not a replacement for any acute care hospital in the relevant area;
- (2) any transaction otherwise subject to this Paragraph IV of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000); or
- (3) any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

**IT IS FURTHER ORDERED** that, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all, or any substantial part of, any acute care hospital it operates in the relevant area to be acquired by any other person (except pursuant to the divestitures required by Paragraph II, or to divestitures by a trustee pursuant to Paragraph III), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VI.

**IT IS FURTHER ORDERED** that within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully complied with Paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraph II of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of the order, including a description of all substantive contacts or negotiations for the divestitures, and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures.

VII.

**IT IS FURTHER ORDERED** that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corpora

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and with out restraint or interference from it, to interview officers,

directors, or employees of respondent, who may have counsel

The "Schedule A assets" to be divested pursuant to Paragraph II shall include all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture) of French Hospital Medical Center, 1911 Johnson Avenue, San Luis Obispo, California, including without limitation OrNda's ownership, partnership, or leasehold interests in the following properties and businesses in San Luis Obispo County, California:

1. Pacific Medical Plaza, 1941 Johnson Avenue, San Luis Obispo, California;
2. Pulse Health Services, 1911 Johnson Avenue, San Luis Obispo, California;
3. Med Stop Urgent Care Centers, at 283 Madonna Road, San Luis Obispo, California, and 877 Oak Park Boulevard, Pismo Beach, California;
4. Central Coast Surgery Center, 1941 Johnson Avenue, Suite 103, San Luis Obispo, California;
5. San Luis Recovery Partners, 1575 Bishop, San Luis Obispo, California; and
6. La Posada Medical Center, 225 Posada Lane, Templeton, California.

The "Schedule A assets" shall include, in addition, the January 1997 loan agreement between OrNda Investments, Inc. and Monarch Health Systems, including all of OrNda Investments' rights and obligations thereunder, and all promissory notes issued thereunder.

**SCHEDULE B**

The "Schedule B assets" shall consist of all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture) of Valley Community Hospital, 505 East Plaza Drive, Santa Maria, California, including without limitation OrNda's ownership, partnership, or leasehold interests in the following properties and businesses in Santa Barbara County, California:

1. Valley Medical Plaza, 525 East Plaza Drive, Santa Maria, California;
2. Valley Medical Courtyard, 505 and 506 East Plaza Drive, Santa Maria, California; and
3. Knollwood Business Plaza, 5075 South Bradley Road, Santa Maria, California.



**WHEREAS**, if the Commission accepts the Agreement Containing Consent Order in this matter, which would require the divestiture of French Hospital Medical Center and certain related assets identified in Schedule A of the Consent Order (the "Schedule A assets") and respondent's Monarch stock, and may require the divestiture of certain other assets identified in Schedule B of the Consent Order (the "Schedule B assets") pursuant to Paragraph II of the Consent Order, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

**WHEREAS**, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Schedule A assets and the Schedule B assets, and preserving the independence of Monarch from Tenet, during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the "60-day public comment period"), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

**WHEREAS**, if the Commission accepts the Consent Order, and Tenet has not divested with the Commission's prior approval French Hospital Medical Center, related assets, and its Monarch stock, in accordance with the Consent Order, on or before August 1, 1997, the Commission may appoint a trustee to divest those assets; and

**WHEREAS**, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of French Hospital Medical Center, related assets, and Monarch stock, and the Commission's right to have French Hospital Medical Center continue as a viable acute care hospital independent of Tenet; and

**WHEREAS**, the purposes of this Agreement and the Consent Order are to:

paragraphs 2.a.(i) or 2.a.(ii), it will comply with the provisions of paragraph 3 of this Agreement:

- (i) three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or
- (ii) the day after the divestitures required by Paragraphs II.A. and II.B. of the Consent Order are completed.

b. from the date this Agreement to Hold Separate is accepted until the earliest of the dates listed in sub paragraphs 2.b.(i) or 2.b.(ii), it will comply with the provisions of paragraph 4 of this Agreement:

- (i) three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or
- (ii) the day after the divestiture required by Paragraph II.C. of the Consent Order is completed, or, if later, the day after all loan agreements between respondent and Monarch expire, are terminated, or are divested in accordance with Paragraph II.A. of the Consent Order.

3. To ensure the complete independence and viability of the Schedule A assets and the Schedule B assets, and to ensure that no competitive information is exchanged between respondent and the managers of the Schedule A assets and the Schedule B assets, respondent shall hold the Schedule A assets and the Schedule B assets, as they are presently constituted, separate and apart on the following terms and conditions:

a. The Schedule A assets and the Schedule B assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Tenet excluding the Schedule A assets and the Schedule B assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the Consent Order, and except as otherwise provided in this Agreement.

- b. Prior to, or simultaneously with the Acquisition, Respondent shall adopt, for the corporations that now own and operate, respectively, French Hospital Medical Center (the "French Company"), and Valley Community Hospital (the "Valley Company"), constituent documents that are not inconsistent with other provisions of this Agreement or the Consent Order. Respondent shall transfer to the French Company all ownership and control of any Schedule A assets it does not already own and control. Respondent shall transfer to the Valley Company all ownership and control of any Schedule B assets it does not already own and control. The French Company and the Valley Company shall hereafter be described collectively as the "Hold Separate Companies."
- c. The boards of directors of each of the Hold Separate Companies ("Hold Separate Companies Boards") shall have the same three members for each of the Hold Separate Companies. Respondent shall elect the members of the Hold Separate Companies Boards. The Hold Separate Companies Boards shall consist of the following three persons: (i) Michael D. Bakst; (ii) Thomas Sawicki, and (iii) Michael H. Focht Sr., provided they agree, or comparable, knowledgeable persons. The Chairman of the Hold Separate Companies Boards shall be Michael D. Bakst, provided he agrees, or a comparable, knowledgeable person, who shall remain independent of Respondent and competent to assure the continued viability and competitiveness of the Schedule A assets and the Schedule B assets. The Hold Separate Companies Boards shall include no more than one member who is a director, officer, employee, or agent of Respondent, who shall be Michael H. Focht Sr., provided he agrees, or a comparable, knowledgeable person ("the Respondent's Hold Separate Companies Boards member"). The Hold Separate Companies Boards shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the Hold Separate Companies Boards during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.
- d. The operations of the Hold Separate Companies shall, to the extent deemed desirable by the Hold Separate

Companies Boards, coordinate their operations with each other as if they were a single company.

- e. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Schedule A assets, the Schedule B assets, the independent Chairman of the Boards of the Hold Separate Companies, or any of their operations or businesses; pro

Schedule B assets, or to accept other employment with respondent; and shall take all actions necessary to remove any impediments that may deter such employees from continuing their employment with the Schedule A assets or the Schedule B assets, including but not limited to, the payment, or transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of respondent.

- j0 With the exception of the respondent's Hold Separate Companies Boards Member, respondent shall not change the composition of the Hold Separate Companies Boards unless the independent Chairman consents. The independent Chairman shall have power to remove members of the Hold Separate Companies Boards for cause and to require respondent to appoint replacement members to the Hold Separate Companies Boards as provided in Paragraph 3.c. Respondent shall not change the composition of the management of the Hold Separate Companies, except that the Hold Separate Companies Boards shall have the power to remove management employees for cause.
- k0 If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in Paragraph 3.c. of this Agreement.
- l0 Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to

respondent's acute care hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to the Hold Separate Companies necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, Medicare or Medicaid cost reports, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, health plan contracts, marketing methods, patents, technologies, processes, or other trade secrets.)

- m0 Except as permitted by this Agreement, the respondent's Hold Separate Companies Boards member shall not, in his or her capacity as a Hold Separate Companies Boards member, receive Material Confidential Information, and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's Hold Separate Companies Boards member shall enter a confidentiality agreement prohibiting disclosure of Material Confidential Information. The respondent's Hold Separate Companies Boards member shall participate in matters that come before the Hold Separate Companies Boards only for the limited purposes of considering a capital investment or other transaction exceeding \$250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the Consent Order.
- Except as permitted by this Agreement, the respondent's Hold Separate Companies Boards member shall not participate in any matter, or attempt to influence the votes of the other members of the Hold Separate Companies Boards with respect to matters, that would involve a conflict of interest if respondent and the Hold Separate Companies were separate and independent entities.
- n0 Any material transaction of the Hold Separate Companies that is out of the ordinary course of business must be approved by a majority vote of the Hold Separate

Companies Boards; provided that the Hold Separate Companies shall engage in no transaction, material or otherwise, that is precluded by this Agreement.

- o0 If necessary, respondent shall provide the Hold Separate Companies with sufficient working capital to operate the Schedule A assets and the Schedule B assets at their current rate of operation, to fulfill respondent's obligations under the loan agreement identified in Schedule A of the Consent Order, and to carry out any capital improvement plans for the Schedule A assets and the Schedule B assets that have already been approved.
  
- p0 Respondent shall continue to provide the same support services to the Schedule A assets and the Schedule B assets as are being provided to them by OrNda as of the date this Agreement is signed. Respondent may charge the Hold Separate Companies the same fees, if any, charged by OrNda as of December 1, 1996 for such support services. Respondent's personnel providing such support services must retain and maintain all Material Confidential Information of the Schedule A assets and the Schedule B assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Schedule A assets and the Schedule B assets.
  
- q0 During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) August 1, 1997, or (ii) the date contemplated by subparagraph 2.a.(ii) (the "Initial Divestiture Period"), respondent shall make available for use by the Hold Separate Companies funds sufficient to perform all necessary routine maintenance to, and replacements of, the Schedule A assets and the Schedule B assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide the Hold Separate Companies with such funds as are necessary to maintain the viability, competitiveness, and

marketability of the Schedule A assets and the Schedule B assets.

r0 Respondent shall circulate, to its management employees responsible for the operation of acute care hospitals in San Luis Obispo County, California, a notice of this Hold Separate and Consent Order in the form attached as Attachment A.

s0 The Hold Separate Companies Boards shall serve at the cost and expense of respondent. Respondent shall indemnify the Hold Separate Companies Boards against any losses or claims of any kind that might arise out of its involvement under this Hold Separate Agreement, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Companies Boards directors.

t0 The Hold Separate Companies Boards shall have access to and be informed about all companies who inquire about, seek, or propose to acquire the Schedule A assets or the Schedule B assets.

u0 Within thirty (30) days after the date this Agreement is accepted by the Commission and every thirty (30) days thereafter until this Agreement terminates, the Hold Separate Companies Boards shall together report in writing to the Commission concerning those Boards' efforts to accomplish the purposes of this Hold Separate.

4 To ensure the complete independence of Monarch from respondent (meaning here and hereinafter, Tenet excluding the Schedule A assets and the Schedule B assets), and to ensure that no competitive Monarch information is disclosed to respondent, respondent shall establish a trust for Tenet's Monarch stock, on the following terms and conditions:

a. Prior to, or simultaneously with the Acquisition, respondent shall establish a voting trust for Tenet's Monarch stock, for which the Trustee shall be the independent Chairman of the Hold Separate Companies Boards. The Trustee shall exercise any and all voting rights of Tenet's Monarch stock, on all matters (including without limitation the election or removal of directors), voted on by Monarch shareholders,

whether at a regular or special meeting, or pursuant to a unanimous written consent. The Trustee shall vote all shares of Tenet's Monarch stock in the same proportion as all other shares of Monarch's stock are voted with respect to such matters. The Trustee shall also be present, in person or by proxy, at all annual or special meetings of Monarch shareholders, so that Tenet's Monarch stock may be counted for purposes of determining the presence of a quorum at such meetings.

- b. Tenet shall not use its holdings of Monarch stock, or any loan agreements with Monarch:
  - (i) to control or influence the conduct of Monarch's business, or Monarch's business relationships with French Hospital Medical Center; or
  - (ii) to obtain Material Confidential Information of Monarch, except Monarch financial information necessary and essential to allow respondent to prepare United States consolidated financial reports and tax returns, to allow respondent to prepare Medicare or Medicaid cost reports, or for use by the Hold Separate Companies in order to carry out the loan agreement identified in Schedule A of the Consent Order (which Monarch information shall be used only for the purposes set forth in this subparagraph).
  
- c.

6 To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or the Consent Order.

7 For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

- a0 Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the respondent relating to compliance with this Agreement;
- b0 Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

8 This Agreement shall not be binding until approved by the Commission.

Dated: January

Consent Agreement Accepted for Public  
Comment by the Commission on January  
28, 1997

Donald S. Clark  
Secretary

**ATTACHMENT A**

**NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY**

Tenet Healthcare Corporation has entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain assets, in or near San Luis Obispo County, California, that Tenet is to acquire through its acquisition of OrNda Healthcorp.

Until after the divestitures required under the Consent Agreement are completed, OrNda's hospitals and other businesses in San Luis Obispo County, California, as well as those in Santa Barbara County, California (collectively the "Hold Separate Assets"), must be managed and maintained as a separate, ongoing business, independent of all other Tenet businesses. All competitive information relating to the Hold Separate Assets must be retained and maintained by the persons involved in the operation of those Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Tenet business. Similarly, all such persons involved in Tenet shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of the Hold Separate Assets. (These confidentiality requirements are subject to limited exceptions, set forth in the Hold Separate Agreement.)

Monarch Health Systems is also to remain independent of Tenet's businesses, other than the Hold Separate Assets, pending Tenet's divestiture of its Monarch stock.

Any violation of the Consent Agreement or the Agreement to Hold Separate (which is incorporated by reference as part of the Consent Order to which Tenet has agreed), may subject Tenet to civil penalties and other relief as provided by law.

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

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In the Matter of )  
TENET HEALTHCARE CORPORATION, ) Docket No.  
a corporation. )

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**COMPLAINT**

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the respondent, Tenet Healthcare Corporation ("Tenet"), a corporation subject to the jurisdiction of the Commission, has entered into an agreement whereby Tenet will acquire the stock of OrNda HealthCorp ("OrNda"); that the acquisition agreement violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C.

and care of physically injured or sick persons with short -term or episodic health problems or infirmities.

(b) "Acute care inpatient hospital services" means 24 -hour inpatient health care, and related medical or surgical diagnostic and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities.

#### **THE PARTIES**

PARAGRAPH TWO: Tenet is a corporation organized, existing, and doing business under and by virtue of the laws of Nevada, with its principal place of business at 3820 State Street, Santa Barbara, California 93105. Tenet owns and operates, among other things, over seventy-five acute care hospitals throughout the United States. Included among those hospitals are Sierra Vista Regional Medical Center ("Sierra Vista"), a 195-bed acute care hospital in the city of San Luis Obispo, California, and Twin Cities Community Hospital, an 84-bed acute care hospital in Templeton, California, about twenty-two miles north of the city of San Luis Obispo. In fiscal year 1996, Tenet had total sales of approximately \$5.6 billion, and its two hospitals in San Luis Obispo County, California had total sales of about \$83 million.

PARAGRAPH THREE: OrNda is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business at 3401 West End Avenue, Nashville, Tennessee 37203. OrNda owns and operates over fifty acute care hospitals throughout the United States. Included among those hospitals is French Hospital Medical Center ("French Hospital"), a 147-bed acute care hospital in the city of San Luis Obispo, California. In fiscal year 1996, OrNda had total sales of about \$1.8 billion, and French Hospital had total sales of about \$47 million.

#### **JURISDICTION**

PARAGRAPH FOUR: Tenet and OrNda, at all times relevant herein, have been and are now engaged in or affecting commerce, as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. § 12. The businesses of Tenet and OrNda, at all times relevant herein, have been and are now in or affecting

commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C.

other things, meet stringent new state earthquake safety requirements.

PARAGRAPH NINE: The relevant market is highly concentrated, whether measured by the Herfindahl -Hirschman Index ("HHI") or by market share. The proposed acquisition would significantly increase concentration in this market. It would increase Tenet 's market share by at least 17%, to at least 71%. The HHI would increase at least 2000 points, to a post-acquisition level over 5000.

#### **ENTRY CONDITIONS**

PARAGRAPH TEN: It is unlikely that entry into the relevant market would prevent, or remedy in a timely manner, any anticompetitive effects from the proposed acquisition. Entry is difficult, and likely to take more than two years, due to among other things the time required to obtain necessary government permits, including state architectural review, and to complete construction of an acute care hospital.

#### **COMPETITION**

PARAGRAPH ELEVEN: Tenet and OrNda are actual and potential competitors in the relevant market.

#### **EFFECTS**

PARAGRAPH TWELVE: The effects of the aforesaid acquisition, if consummated, may be substantially to lessen competition in the relevant market in the following ways, among others:

(a) it would eliminate actual and potential competition between Tenet and OrNda;

(f) it may increase the possibility of collusion or interdependent coordination by the remaining providers of acute care inpatient hospital services;

(g) it may deny patients, physicians, third-party payers, and other consumers of acute care inpatient hospital services the benefits of free and open competition based on price, quality, and service; and

(h) it may deny the San Luis Obispo County government the ability to purchase on competitive terms the acute care inpatient hospital services it must provide to certain indigent County residents, as a potentially less costly alternative to providing such services to those residents at its own hospital.

#### **VIOLATIONS CHARGED**

PARAGRAPH THIRTEEN: The acquisition agreement described in PARAGRAPH FIVE above violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

PARAGRAPH FOURTEEN: The acquisition described in PARAGRAPH FIVE, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C.

**Analysis of Proposed Consent Order to Aid Public Comment**

**Tenet Healthcare Corp., FTC File No. 971-0024**

The Federal Trade Commission has accepted, subject to final approval, a proposed consent order from Tenet Healthcare Corp. ("Tenet"), to resolve antitrust concerns raised by Tenet's proposed acquisition of OrNda Healthcorp ("OrNda"). Tenet would be required to divest, among other things, OrNda's French Hospital and Medical Center in San Luis Obispo, California ("French"), and OrNda's interests in Monarch Health Systems, an integrated health care delivery system in the San Luis Obispo area. Tenet has also agreed to hold French, the Monarch interests, and some additional assets separate from Tenet's other assets, pending the required divestitures.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

### The Commission's Complaint

The proposed consent order would settle charges by the Federal Trade Commission that Tenet's proposed acquisition of OrNda Healthcorp would endanger competition in the market for inpatient acute care hospital services in San Luis Obispo County, California, and so would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act. This matter involves the same market, and the same principal hospitals, as were at issue in a previous Commission hospital merger case, American Medical International, Inc., 104 F.T.C. 1, 617 (1984), which resulted in the divestiture of French.

Tenet operates over 75 acute care hospitals nationwide. In San Luis Obispo County, Tenet operates two acute care hospitals, 195-bed Sierra Vista Regional Medical Center ("Sierra Vista") in the city of San Luis Obispo, and 84-bed Twin Cities Community Hospital ("Twin Cities") in Templeton about 22 miles to the north of San Luis Obispo. OrNda operates over 50 acute care hospitals nationwide, including 147-bed French Hospital Medical Center in the city of San Luis Obispo. OrNda also operates 70-bed Valley Community Hospital in Santa Maria, in northern Santa Barbara County about 30 miles south of the city of San Luis Obispo.

The complaint alleges that Tenet and OrNda are the two leading competitors, out of only four providers, of acute care hospital

services in San Luis Obispo County, California. It further alleges that Tenet's main hospital in the area, Sierra Vista, and OrNda's French hospital, offer broader service complements than any of the other hospitals in the county, and are each other's principal and most direct competitor.

The complaint identifies 79-bed Arroyo Grande Community Hospital in southern San Luis Obispo County, and county-owned 64-bed San Luis Obispo General Hospital ("SLO General") in the city of San Luis Obispo, as the only acute care hospitals in San Luis Obispo County that would not be owned by Tenet after the acquisition of OrNda. The complaint further alleges that SLO General's long-term competitive prospects are clouded by its need for major capital improvements, including construction required to bring the hospital into compliance with stringent new state earthquake safety standards.

As stated in the complaint, the proposed acquisition would eliminate competition between Tenet and OrNda, and significantly increase the already high level of concentration for inpatient acute care hospital services in San Luis Obispo County. The complaint also alleges that the proposed merger would increase

the market share of Tenet, already the leading provider of inpatient acute care hospital services in the Tri-Cities area, to over 71%, an increase of at least 17% above its existing market share. The complaint further alleges that, as measured by the Herfindahl-Hirschman Index ("HHI"), market concentration would increase more than 2000 points to a post-acquisition level of over 5000. The HHI is a measure of market concentration used by the Federal antitrust enforcement agencies to estimate, in conjunction with information on other market factors, the likelihood that a merger would endanger competition. As explained in the 1992 Merger Guidelines, the Federal antitrust enforcement agencies consider markets with HHI levels above 1800 (on a scale of 0 to 10,000) to be "highly concentrated," and, where the post-merger HHI would exceed 1800, presume that a merger producing an increase in the HHI of more than 100 points is likely to significantly lessen competition (unless factors other than market concentration indicate that the merger presents no significant threat to competition).

According to the complaint, it is unlikely that entry into San Luis Obispo County by a new acute care hospital will prevent or remedy any anticompetitive price increases or other effects resulting from the acquisition. This is due to, among other factors, the lengthy lead times required to build new hospitals in

the relevant market, such as those required by California's requirements for advance review of hospital building plans.

The complaint alleges that the proposed acquisition may: substantially lessen competition for inpatient acute care hospital services in San Luis Obispo County; result in less favorable prices and other terms for health plans that contract for such services in the county; increase the possibility of collusion or interdependent coordination by the remaining market competitors; deny patients, physicians, third-party payers, and other consumers of inpatient acute care hospital services, the benefits of free and open competition based on price, quality, and service; and deny the opportunity for the San Luis Obispo County government to purchase, on competitive terms, the hospital care it must provide to certain indigent County residents, as a potentially less costly alternative to providing those services at SLO General.

#### **The Proposed Consent and Hold Separate Agreements**

The consent order, if issued in final form by the Commission, would require Tenet to divest French and related OrNda assets, after Tenet acquires OrNda. These assets include,

among others, OrNda's interests in a surgery center, two urgent care centers, and two medical office buildings in San Luis Obispo County. (Order, Paragraph II.A. and II.B.)

Tenet would also be required to divest OrNda's holdings of about one-third of the stock of, and also a short-term loan agreement with, Monarch Health Systems ("Monarch"). Monarch is an integrated health delivery system, operating in San Luis Obispo and Santa Barbara Counties. Monarch has a long-term exclusive contract with French, through which French receives a large percentage of its patients. (Order, Paragraph II.C.) As part of the Agreement to Hold Separate accompanying the proposed order, Tenet has agreed -- effective immediately -- to place OrNda's stock in Monarch into a voting trust, and take other measures designed to prevent Tenet from exercising influence or control over Monarch, pending divestiture of the Monarch stock and loan agreement. (Hold Separate, Paragraph 4.) These measures are to prevent Tenet from using the Monarch stock and loan agreement to damage French's business relationship with Monarch, and thereby lessen French's competitiveness and viability.

Under the terms of the proposed order, Tenet must make the foregoing divestitures to an acquirer, and in a manner, approved

by the Commission. (However, Tenet may divest the Monarch stock to someone other than the purchaser of French, and if Monarch is bought in its entirety by a third party, Tenet need not obtain prior approval to divest its Monarch stock to Monarch's new owner.)

The approval requirement allows the Commission to make sure that Tenet's divestitures fulfill their purpose, of ensuring the continuation of French as an ongoing, independent, and viable acute care hospital, and remedying the lessening of competition resulting from Tenet's acquisition of OrNda. (Order, Paragraph II.D. and II.E.)

The divestitures must be completed by August 1, 1997; otherwise, Tenet will consent to the appointment of a trustee, who will have twelve additional months to effect the divestitures. If Tenet does not complete a Commission-approved divestiture of French by August 1, 1997, the Commission may appoint a trustee to complete that divestiture. The trustee may divest not only French and related assets, but also OrNda's Valley Community Hospital in Santa Maria, south of San Luis Obispo County, and certain assets relating to Valley, if the additional hospital and assets turn out to be necessary for a

successful divestiture of French. (Order, Paragraphs II.E. and III.)

The Agreement to Hold Separate executed in conjunction with the consent agreement requires Tenet, effective immediately, to maintain French, Valley, the Monarch stock and loan agreement, and related assets separate from Tenet's other operations until the completion of the divestitures, or as otherwise specified. The Agreement to Hold Separate also requires Tenet to comply with the provisions of the proposed consent order, pending its final approval by the Commission.

To assure the complete independence and viability of French and Valley hospitals, and related assets, the Hold Separate Agreement requires Tenet to transfer control of those assets to a three-member board (only one of whom will be a Tenet employee), and to ensure that no competitive information is exchanged between Tenet and those assets. (The Hold Separate Agreement's provisions relating to the Monarch stock have been described above.) Under the Hold Separate Agreement, Tenet may not exercise any direction, control, or influence over the assets to be held separate, except as necessary to ensure compliance with the Consent Order and the Hold Separate Agreement, and to ensure

the continued viability, competitiveness, and marketability of those assets. (Hold Separate, Paragraph 3.)

For ten years after the order is made final, the proposed consent order would prohibit Tenet from combining (through purchase, sale, lease, or otherwise) its acute care hospitals in San Luis Obispo County with any other acute care hospital in that area, or from acquiring Monarch stock, without prior notice to the Federal Trade Commission. Tenet must provide such notice in accordance with procedures similar to those governing premerger notifications required by Section 7A of the Clayton Act, 15 U.S.C. § 18a (unless the merger is already subject to Section 7A's requirements, in which case no notice is necessary over and above that provided pursuant to Section 7A). The order provision supplements Section 7A, to ensure that the Commission receives advance notice of potentially significant Tenet mergers in the relevant market, and to thereby give the Commission an opportunity to block any such merger if it can demonstrate that the merger may substantially lessen competition. The proposed order contains certain limited exceptions to the prior notification requirement for transactions which are unlikely to substantially lessen competition, such as for transactions under \$1 million. (Order, Paragraph IV)

The proposed consent order also contains provisions concerning its continued application to future owners of French and of Tenet's

acute care hospitals in San Luis Obispo County. The acquirer of French, pursuant to the divestiture called for by the order, must agree not to transfer the hospital, for ten years from the date of the order, without prior notice to the Commission, to any person already operating an acute care hospital in San Luis Obispo County. (Order, Paragraph II.H.) In addition, the order would prohibit Tenet for ten years from transferring an acute care hospital facility in San Luis Obispo County, other than French ( e.g., Sierra Vista or Twin Cities) to another person, unless the acquiring person first files with the Commission an agreement to be bound by the order. (Order, Paragraph V)

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The purpose of this analysis is to invite public comment concerning the proposed order, and to assist the Commission in its determination of whether to make the order final. This analysis is not intended to constitute an official interpretation of the agreement or to modify its terms in any way.