Glenbrook hospitals are located in Cook County and that after the merger ENH negotiated contracts [redacted]

on behalf of the three hospitals as a system. Respondents deny the remaining allegations in

[redacted]

ANSWER: Respondents admit that ENH owns and operates Evanston, located in Evanston, Illinois; Glenbrook, a 136-bed hospital; and Highland Park. Respondents deny the remaining allegations in paragraph 5.

6. Prior to the merger Highland Park was offering a broad range of medical and surgical services. In addition, Highland Park was pursuing the offering of open heart surgery through regulatory filings with the state of Illinois and through formation of a joint venture with Evanston

[redacted]

and surgical services. Respondents deny the remaining allegations in paragraph 6.

7. ENH is the sole member or owner of ENH Faculty Practice Associates ("Faculty Practice

JURISDICTION

9. ENH is, and at all relevant times has been, engaged in commerce within the meaning of the Clayton Act. Before their merger with ENH, Highland Park, a non-profit Illinois corporation, and its parent Lakeland Health Services, Inc., a non-profit Illinois corporation, were engaged in commerce within the meaning of the Clayton Act. ENH's merger with Highland Park constitutes an acquisition under the Clayton Act.

ANSWER: Paragraph 9 attempts to state a legal conclusion to which no response is required. To the extent that a response to this paragraph is deemed necessary, the allegations are denied.

10. ENH Medical Group is, and at all relevant times has been, engaged in commerce within the meaning of the Federal Trade Commission Act.

ANSWER: Paragraph 10 attempts to state a legal conclusion to which no response is required. To the extent that a response to this paragraph is deemed necessary, the allegations are denied.

11. ENH Medical Group is a corporation within the meaning of Section 4 of the Federal Trade Commission Act.

ANSWER: Paragraph 11 attempts to state a legal conclusion to which no response is required. To the extent that a response to this paragraph is deemed necessary, the allegations are denied.

THE MERGER

12. On or about January 1, 2000, ENH and Lakeland Health Services, Inc., completed a merger by which Lakeland Health Services, Inc., and its subsidiary, Highland Park, merged with and into ENH. There was no merger or acquisition price in connection with this transaction. In August 1999, ENH estimated the fair market value of Highland Park at $233,528,000.

ANSWER: Respondents admit that on or about January 1, 2000, ENH and Lakeland Health

12. The merger placed Evanston, Glenbrook, and Highland Park under the control of ENH

[redacted]

PRODUCT MARKET

16. The relevant product market is general acute care inpatient hospital services sold to [redacted]

limited to, improvements in the quality of patient care throughout the ENH system, outweigh any alleged anticompetitive effects.

ENTRY CONDITIONS

19. It is unlikely that entry into the market would remedy, in a timely manner, the anticompetitive effects from the merger. Entry is difficult and likely to take more than two years [redacted]

ANSWER: Paragraph 19 contains allegations entirely premised on attempts to state legal conclusions in preceding paragraphs of the complaint, and to which no response is required. To the extent that a response to this paragraph is deemed necessary, the allegations are denied.

20. Government regulations also make entry difficult. The Illinois Health Facilities Planning Act, 20 Illinois Code § 3960, restricts entry in this market. The Act prevents firms from entering the market by building a hospital without first obtaining a permit from the Illinois Health

[redacted]

information sufficient to admit or to deny the hypothetical allegations in the first sentence of this

[redacted]

[redacted]

24. The merger was not necessary to permit the parties to achieve overriding efficiencies to vindicate the merger. Should the matter of efficiencies be placed properly in issue, the evidence establishes that the merger has not led to lower costs at ENH that led to lower prices for consumers. Rather, the merger has led to large cost increases at ENH that coincided with large price increases for consumers. The ability of ENH and Glenbrook hospitals to increase these operating costs and their charges for general acute care inpatient hospital services, without a corresponding [redacted]

ANSWER: Paragraph 24 contains allegations entirely premised on attempts to state legal conclusions in preceding paragraphs of the complaint and to which no response is required. To the extent that a response to this paragraph is deemed necessary, Respondents deny the allegations in this paragraph.

25. Prior to the merger, ENH's Evanston and Glenbrook hospitals had operating costs comparable to area hospitals and other comparable hospitals. Following the merger, the operating [redacted]

VIOLATION

27. The merger of ENH and Highland Park has substantially lessened competition in the [redacted]

ANSWER: Respondents admit that United is a commercial payor that conducts business in the state of Illinois. Respondents further admit that ENH renegotiated its contract with United

[redacted]

CIGNA after the merger, and that such contract documents speak for themselves. Respondents deny the characterizations of those contract negotiations, including the allegation that ENH forced CIGNA to pay on the basis of discounts from list prices. Respondents lack information sufficient to admit or deny the remaining allegations in paragraph 31(c), and therefore deny the same.

(d) Aetna Inc. ("Aetna") is a commercial payer that conducts business in the [redacted]

inpatient care. In 2000, ENH raised Aetna's rates by about 45-50% over three years [redacted]

ANSWER: Respondents admit that Preferred Plan is a commercial payor that conducts business in the state of Illinois. Respondents further admit that ENH renegotiated its contract with Preferred Plan after the merger, and that such contract documents speak for themselves. Respondents deny the characterizations of those contract negotiations, including the allegation that ENH forced Preferred Plan to pay on the basis of discounts from list prices. Respondents lack information sufficient to admit or deny the remaining allegations in paragraph 31(f), and therefore [redacted]

> (g) HFN, Inc. ("HFN") is a commercial payer that conducts business in the state of Illinois. As a result of the merger, HFN faced significantly higher prices for inpatient care. In 2000, ENH raised HFN's exclusive provider organization ("EPO") rates by about 21% for Highland Park and 25% at Evanston and Glenbrook hospitals and raised HFN's PPO rates by higher amounts as measured by HFN.

ANSWER: Respondents admit that HFN is a commercial payor that conducts business in the state of Illinois. Respondents further admit that ENH renegotiated its contract with HFN after [redacted]

COUNT III: PRICE FIXING OF PHYSICIAN SERVICES IN VIOLATION OF FTC ACT § 5

33. The allegations of paragraphs 1 through 14, 26 and 31 are incorporated by reference as though fully set forth herein.

ANSWER: Respondents incorporate by reference their answers to paragraphs 1 through 14, 26 and 31.

34. In many instances, ENH also followed a strategy of negotiating hospital services and [redacted] accept the terms offered for both hospital and physician services, or face termination of both.

[redacted]

ANSWER: Respondents admit that ENH Medical group negotiates prices for capitated contracts on behalf of 471 independent physicians. Respondents deny the remaining allegations in the first sentence of paragraph 26. Respondents admit the allegations in the second and third sentences of

[redacted]

40. About 300 of the 450 independent or affiliated physicians formerly contracted through the Highland Park IPA. Following the merger, the ENH Medical Group established prices for about 910 physicians - about 460 salaried physicians and 450 independent physicians, including about 300 formerly affiliated with the Highland Park IPA. Following the merger, the ENH Medical [redacted]

ANSWER: Respondents deny the remaining allegations in paragraph 40.

41. The prices charged for physician services are often set by reference to Medicare's [redacted]

ANSWER: Respondents admit that the rate negotiated between FNH Medical Group and [redacted]

Private Health Care [illegible] during [illegible] in 2009 for Private Health Care's PPO was 140% of [redacted]

Medicare RBRVS. Respondents deny the remaining allegations in paragraph 43(a).

[redacted]

RBRVS. Respondents deny the remaining allegations in paragraph 43(d).

[redacted]

NOTICE OF CONTEMPLATED RELIEF

Respondents deny that the FTC is entitled to any relief and deny all the allegations contained in the FTC's Notice of Contemplated Relief.

GROUNDS OF DEFENSE

Without assuming any burden they would not otherwise bear, Respondents assert the [illegible]

appropriate as the case progresses:

First Defense

The Commission's complaint, in whole or in part, fails to state a claim upon which relief

Fifth Defense

The complaint fails to comply with the requirements of Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. § 45(b), because the issuance of the complaint and relief sought are not in the public interest.

Sixth Defense

The merger of Highland Park into ENH yielded significant procompetitive efficiencies that outweigh any alleged anticompetitive effects.

Seventh Defense

The merger of Highland Park into ENH facilitated significant improvements in the quality of patient care throughout the ENH system that outweigh any alleged anticompetitive effects.

Eighth Defense

Prior to the merger, Highland Park was a failing firm.

Ninth Defense

The merger of Highland Park into ENH [illegible] by the State of Illinois and is [illegible]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

I hereby certify that on March 17, 2004, a copy of the foregoing Respondents' Answer to the Complaint was served by hand delivery on:

The Honorable Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW (H-106)

Washington, DC 20580

Thomas H. Brock, Esq.
Federal Trade Commission