

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

PUBLIC

COMMISSIONERS: Deborah Platt Majoras, Chairman
Thomas B. Leary



In the Matter of
NORTH TEXAS SPECIALTY PHYSICIANS,
a corporation.

Docket No. 9312

Nevertheless, NTSP asks the Commission to stay its Order until NTSP submits its

appeals. In effect, NTSP urges the Commission to allow it to continue—perhaps for several more

years—“to experiment with arrangements among its physicians.”²² On 4/1. We respectfully urge the

Commission to deny Defendant's Motion

requisites for grant of a stay

III. NTSP IS NOT LIKELY TO SUCCEED ON APPEAL

To establish its likelihood of success on appeal, a respondent must do more than rehash

arguments made and rejected previously. See *Kendall H. LLC v. ITC*

them open, notorious, and incontrovertible, that taken together establish a remarkably clear pattern of price fixing. *See, e.g.*, Op. 3, 4, 15-24. NTSP simply does not like the findings made

by the Commission and seeks to resist them. *See* [REDACTED]

Nor is this a close case on the law (or on application of the law to the facts). NTSP's assertion that its conduct—its coordinating the establishment of minimum prices that it then used, often coercively, in negotiating collective prices for its member physicians—was unilateral

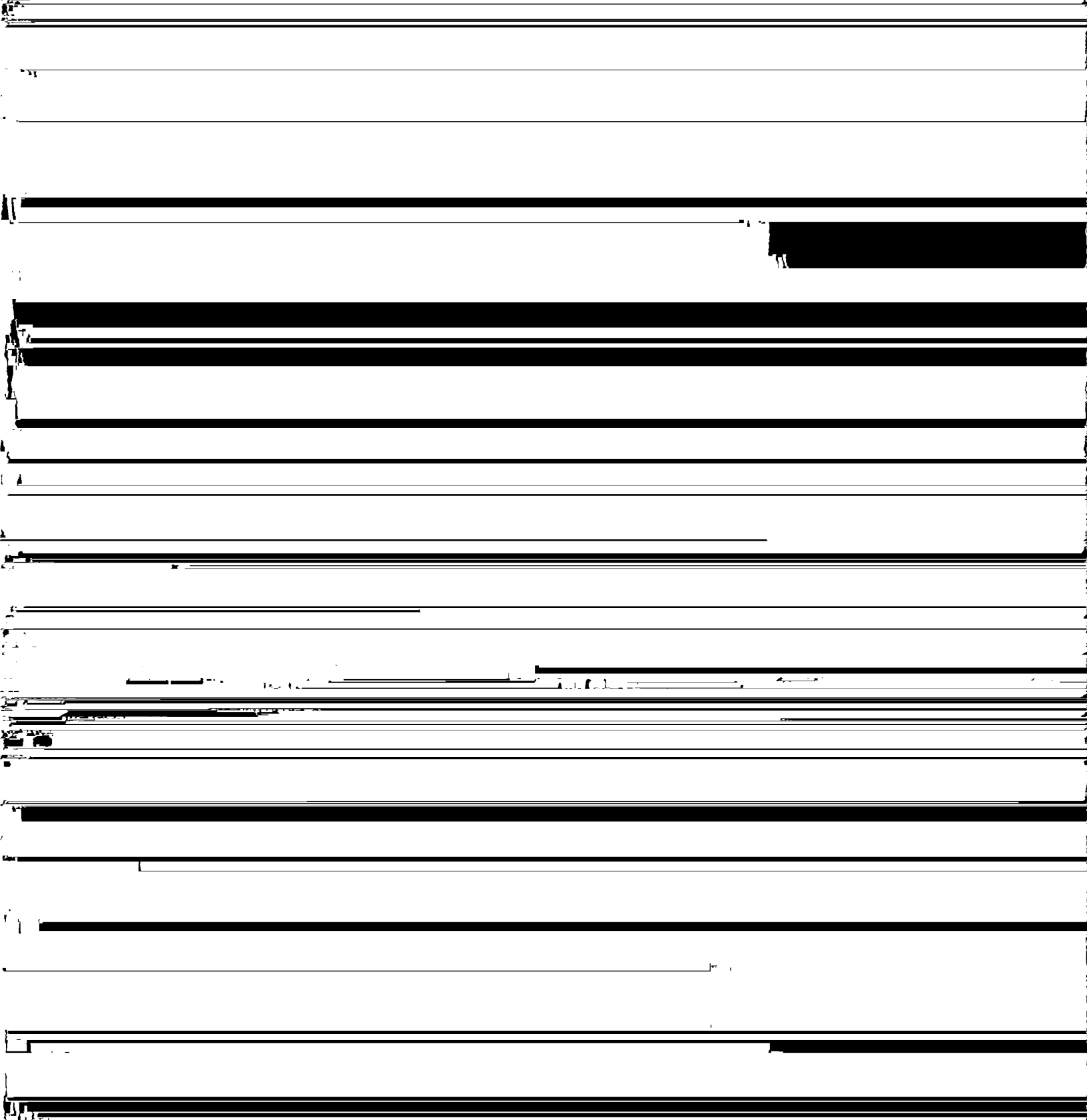
conduct protected by the *Calcutta* doctrine is uninformed or disingenuous. *See* Motion for Stay of [REDACTED]

Final Order Pending Judicial Review (“Motion for Stay”) 4-5. In finding that NTSP's conduct

constituted horizontal concerted action, the Commission articulated the following findings: [REDACTED]

unreasonable restraint of trade; *i.e.*, associations of competitors are not inherently pernicious walking conspiracies.⁸ *Viazis*, 314 F.3d at 764. Respondent's request for a stay of the

Commission's Order ought to be based on stronger grounds than the proposition that 42 U.S.C. § 1395i-3(a)(1) is



The Commission is vested with great discretion in fashioning remedies which may

include "fencing-in" relief. *See, e.g., FTC v. Colgate-Palmolive Co.*, 380 U.S. 374, 395 (1965); *National Lead Co.*, 352 U.S. at 428; *Kraft, Inc. v. FTC*, 970 F.2d 311, 326-27 (7th Cir. 1992). The Commission's exercise of that discretion will be upheld provided only that the remedies fashioned are reasonably related to the unlawful conduct found. *See FTC v. Ruberoid Co.*, 343 U.S. 470, 473 (1952); *Jacob Siegel Co. v. FTC*, 327 U.S. 608, 613 (1946). The Commission's Order explains the manner in which each element of its relief is specifically addressed to the

unlawful conduct. CNITSD 10 and its in law, and law, not necessarily available

equities *not* weigh decisively in favor of grant of a stay; the balance of equities tilts pronouncedly in the opposite direction.

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N... C... S

An applicant for a stay must establish that it will suffer irreparable harm if a stay is not granted. 16 C.F.R. § 2.56(c). "Simple cessation of harm or non-occurrence of harm is not sufficient to establish irreparable harm." *Am. Fish & Wildlife Ass'n v. U.S. Fish & Wildlife Serv.*, 2014 WL 1234567 (D.C. 2014).

and reputational costs. Motion for Stay 9. In contrast, Novartis established, among other things, that it would have been required to spend some \$8,000,000 for corrective advertising, in effect

mitigating and avoiding harm to competition resulting from NTSP's unilateral practices. C-1

practices.

V. CONCLUSION

NTSP has not made—and cannot make—a credible argument either that it has a reasonable prospect of overturning the Commission's Opinion and Order or appeal on that the 1-1-1-6

I, Sarah Crooke, hereby certify that on December 20, 2005, I caused Complaint Case #12-

Opposition to Motion for Stay of Final Order Pending Judicial Review to be served upon the following persons:

Office of the Secretary (original and 12 copies via hand delivery, electronic version via e-mail)
Donald S. Clark
Federal Trade Commission