offering to lower its rates and aggressively seeking to improve its quality to attract patients back to its facilities from SIR. As evidenced by their competitive interactions, SIR considered RHS to be its "primary competitor" and RHS, in turn, described SIR as its "nemesis." Not surprisingly, then, in high-level, internal communications, RHS described the Acquisition as a "defensive and offensive" strategy designed to "protect the hospital's market share." If the Acquisition proceeds, these benefits of the head-to-head competition between RHS and SIR described above – lower costs and quality improvements – will vanish.

2. One of RHS's principal motivations in acquiring SIR is to protect its market share. Ordinary-course-of-business documents reveal that RHS was concerned by "notable losses in surgical volumes" to SIR. Executives were alarmed that market shares in key

relevant market, outpatient orthopedic surgical services, the Acquisition reduces the number of significant competitors from four to three.

6. The Acquisition is presumptively unlawful in each of the four affected markets under the relevant case law and the U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"). Post-Acquisition market shares in each of the four relevant markets are extraordinarily high, ranging from 49 percent to 71 percent, with correspondingly high concentration levels.

7. Health plans with members in the Reading area believe that the Acquisition will increase RHS's already immense bargaining leverage, subjecting their members to higher rates. For some health plans, an increase in SIR's rates to those of RHS equates REDACTED [redacted], and thousands more dollars in out-of-pocket costs for many individual patients. For example, for one local health plan's members, a hip and knee replacement would cost a patient with 20 percent co-insuran[redacted] *more* if performed at RHS's rates rather than SIR's rates. In addition, two health plans are currently negotiating to bring SIR into their provider networks; for these health plans, RHS will be able to demand and obtain much higher rates than SIR could independently. Local employers are equally concerned that the Acquisition will burden them with even higher employee healthcare costs, potentially forcing them to cut benefits.

8. The Acquisition also would eliminate important competition between SIR and RHS to maintain and improve the quality of their facilities and services. SIR's high quality and patient satisfaction is likely to be diminished under RHS's more bureaucratic management. The Acquisition also eliminates RHS's acknowledged incentive to improve its own quality to compete with SIR.

9. Entry or expansion by other providers of the relevant surgical services will not mitigate the loss of price and non-price competition in the near future, if ever. Hospitals in the area surrounding the Reading area, and the existing ambulatory surgery centers within the Reading area, are unable to and uninterested in expanding their services due to, among other things, RHS's dominance over primary care physicians and a shortage of surgical specialists in the area. Even St. Joseph, the only other general acute-care hospital in the Reading area, has had difficulty recruiting specialists for services included in the relevant service markets, and thus could not likely increase its surgical capacity. In addition, because the Patient Protection and Affordable Care Act ("PPACA") precludes the building of any new physician-owned hospital, as well as expansion of existing physician-owned hospitals, a group of physicians cannot replicate SIR's entry for inpatient services. There are no verifiable merger-specific efficiencies or quality claims that would come close to offsetting the serious competitive harm threatened by the Acquisition.

II.

BACKGROUND

A.

Jurisdiction

10. RHS and SIR are, and at all relevant times have been, engaged in commerce or in activities affecting commerce, within the meaning of the FTC Act and the Clayton Act. The Acquisition constitutes an acquisition under Section 7 of the Clayton Act.

B.

Respondents

11. Respondent RHS is a not-for-profit healthcare system incorporated under and by virtue of the laws of Pennsylvania. RHS is headquartered at 300 South 6th Avenue, West Reading, Pennsylvania 19611. RHS owns and operates Reading Hospital, a general acute-care hospital that has 735 licensed beds. RHS also owns a 112-bed post-acute rehabilitation center and a continuing care retirement community facility. RHS is by far the largest employer of physicians in the Reading area, employing about 332 physicians. During fiscal year 2011, RHS generated $47 million in operating income with $132 million in EBITDA income. RHS currently holds approximately $1.05 billion of unrestricted cash and investments.

12. RHS is also a 50 percent owner of SurgiCenter at Spring Ridge ("SurgiCenter"), an outpatient ambulatory surgery center with three operating rooms, and of Berkshire Health Partners ("BHP"), a provider network that contracts with employers and health plans and does credentialing of physicians and organizations to participate in the network. RHS negotiates reimbursement rates with health plans on behalf of SurgiCenter and it has significant control over SurgiCenter's daily operations. In the ordinary course of business, RHS treats SurgiCenter as its own entity in competitive analyses and market share calculations. Thus for purposes of the competitive analysis, and for measuring market shares and market concentration, SurgiCenter is properly included as part of RHS. Similarly, BHP is effectively controlled by RHS. For example, BHP's CEO reports directly to RHS's CEO.

13. Respondent SIR, organized as a limited partnership under the laws of Pennsylvania, is a for-profit specialty surgical hospital located at 2752 Century Boulevard, Wyomissing, Pennsylvania 19610. SIR has 15 licensed beds and provides a variety of inpatient and outpatient surgical services, including ENT, orthopedic, spine, neurological, and general surgery procedures. A group of 16 physicians owns 85 percent of SIR, with the remaining 15 percent owned by Nueterra Healthcare LLC ("Nueterra"), a developer and

manager of surgery centers. During fiscal year 2011, SIR generated in employees – in creating provider networks that offer convenience, high quality of care, and negotiated reimbursement rates.

18. In the second stage of competition, each hospital or facility competes with other in-network providers to attract patients. Health plans typically seek to offer multiple in-network providers with similar out-of-pocket costs. Providers included in the same network must compete to attract patients by offering better services, amenities, convenience, quality of care, and patient satisfaction than their competitors.

III.

ANTICOMPETITIVE EFFECTS

A.

Loss of Price Competition and Increased Bargaining Leverage of RHS

19. The Acquisition will eliminate significant head-to-head competition between the Respondents and therefore increase RHS's ability and incentive to unilaterally demand higher reimbursement rates from commercial health plans.

20. RHS already is the dominant healthcare provider in the Reading area due to its market share and its ownership of the largest hospital, several outpatient facilities, two large physician groups, and a local provider network. Health plans, credit rating agencies, and RHS's own executives agree that RHS is dominant in the area. A consumer survey commissioned by RHS reflected the views of local residents, who describe RHS as "dominating," "power hungry," "large and expensive," and "taking over everything."

21. As the dominant provider in the Reading area, RHS already has significant bargaining leverage during contract negotiations with health plans, enabling it to extract very high rates for its services. Indeed, it is one of the most expensive healthcare providers in central Pennsylvania. RHS is widely recognized by health plans as having the highest rates in the Reading area and for making aggressive rate increase demands, relative to other hospitals. RHS's CFO provided testimony that it uses its leverage over health plans to receive the highest rates possible.

22. SIR entered the market in 2007 as a small but potent challenger to RHS's dominance. SIR offers substantially lower rates to health plans for its services than RHS and also offers a convenient, high-quality alternative for patients. Competition from RHS has helped to keep SIR's rates low in the years since its opening.

23. Even before SIR opened, RHS prepared for the impact it would have on its revenue and volumes. In January 2007 – on the virtual eve of SIR's entry – RHS executives projected losing 60 percent of their surgical cases at Reading Hospital and 80 percent of cases at RHS's SurgiCenter facility.

24. Shortly after SIR's opening, there was indeed a significant shift in patient volume for surgical services from RHS to SIR. RHS's former CFO testified that "SIR's entry had a significant impact on both RHS's patient volume and revenue." A third-party analysis, commissioned by RHS in 2010, notes "declines in surgical procedures, as high as 80 [percent]" at RHS between 2008 and 2010 and attributes these "notable losses of volume" to SIR's increased presence in the market. The report highlighted losses in ENT, orthopedics, and general surgery. A 2010 assessment of surgical services similarly notes that "the largest loss of surgical share occurred in the Primary Service Area and the Northeast SSA [Secondary Service Area] due primarily to the opening of the Surgical Institute of Reading." In 2011, a RHS strategic plan noted that "RHS is seeing a significant decrease in elective joint replacement surgery directly due to the physician-owned Surgical Institute of Reading."

25. RHS executives were alarmed by the loss of volume to SIR. In early 2009, RHS's Director of Marketing wrote that "it is clear that anyone who is not impacted by [insurance issues] is choosing to go to SIR. Ouch." In May 2009, the same executive wrote, "Our real nemesis at this point is SIR!!" and observed that "by service line [it's] even a harder hit . . . [SIR has] 10% of the overall inpatient orthopedic market share in Berks County." Another RHS executive, reviewing market shares for inpatient orthopedic surgical services, noted it was "not a pretty picture with SIR in the mix."

26. SIR's ordinary-course-of-business documents also underscore the close competition between RHS and SIR for patients needing surgical services. An analysis conducted by a third party, based on information provided by SIR, describes RHS as SIR's "[p]rimary competitor." SIR's internal documents addressing the local marketplace overwhelmingly focus on competition with RHS, noting, among other things, the wide differences in rates that the two charge health plans for the same services as well as the higher patient satisfaction scores for services provided at SIR.

27. RHS responded vigorously to the loss of surgical volume to SIR. First, RHS offered discounted rates to several major health plans in exchange for excluding SIR from their provider networks. Most health plans declined the rate discounts because of the importance of SIR to their provider networks and to their members. Accordingly, due to competition between SIR and RHS, health plans in the Reading area had a choice between two beneficial options: (1) to exclude SIR from their provider network and receive a discount from the more expensive, dominant RHS; or (2) to contract with SIR at significantly lower rates than RHS, lowering costs and increasing access for their membership. After the Acquisition, both options are lost.

28. RHS also responded to competition from SIR by using its influence with BHP to steer patients to RHS and away from SIR, including excluding SIR as an in-network provider for its employees. RHS is the largest employer in the Reading area and, thus, a substantial number of individuals in the provider

35. The costs of rate increases resulting from the Acquisition will be borne directly by or passed on to local employers and their employees. In the Reading area, the majority of commercial health-plan membership is comprised of self-insured employers. Self-insured employers rely on health plans only to negotiate rates and provide administrative support; the employers themselves pay the full cost of their employees' healthcare. As a result, self-insured employers immediately and directly bear the full burden of higher rates. Meanwhile, health plans pass on some or all costs of hospital rate increases to their fully-insured customers.

36. Employers, in turn, generally must pass on their increased healthcare costs to their employees, in whole or in part. Employees will bear these increased costs in the form of

offered by both RHS and SIR that do not require an overnight hospital stay, including hernia repair, cholecystectomy (*i.e.*, gall bladder removal), breast lesion removal and biopsies, and black lesion excisions. Outpatient general surgical services are performed by board-certified general surgeons.

50. It is appropriate to cluster these services together as they are offered under similar competitive conditions, including being offered by a unique set of competitors. That set of competitors differs from the set of competitors for the other two outpatient relevant service markets but is similar to the set of competitors that offers inpatient orthopedic surgical services market. However, the respective market shares of the overlapping competitors (namely, Reading Hospital, SIR, and St. Joseph) differ between outpatient general surgical services market and the inpatient orthopedic surgical services market, and RHS's SurgiCenter competes in this market, unlike the inpatient orthopedic services market. Also, outpatient general surgical services need not be performed in a hospital, unlike the services in the inpatient orthopedic surgical services market.

V.

THE RELEVANT GEOGRAPHIC MARKET

51. The relevant geographic market in which to analyze the effects of the Acquisition for each relevant service market is the area corresponding to Reading Hospital's primary service area, which is defined by RHS in the ordinary course of business as the set of zip codes from which Reading Hospital draws approximately 85 percent of its patients (the "Reading area"). This area encompasses most of Berks County.

52. In a merger case, the appropriate geographic market is "the area in which consumers can practically turn for alternative sources of the product [or service] and in which the antitrust defendants face competition." A relevant test to determine the boundaries of the geographic market is whether a hypothetical monopolist of the relevant services within the geographic area could profitably raise prices by a small but significant amount. If so, the boundaries of the geographic area are an appropriate geographic market. Defining the geographic market is a "pragmatic undertaking" and it should "correspond to the commercial realities of the industry."

53. The Respondents' own ordinary course of business documents reveal that they do not regard hospitals or ambulatory surgery centers outside of the Reading area as meaningful competitors for the relevant services at issue. Instead, Respondents focus their competitive efforts relating to these services on providers located in the Reading area, and especially each other.

54. RHS analyzes competitors and market shares for the affected services in the Reading area (*i.e.*, its primary service area) separately from other geographic areas. RHS has also used the Reading area as the basis for negotiations with health plans to exclude competitors

from provider networks. Health plans, when preparing to negotiate with RHS, also analyze competition within the Reading area.

55. Reading area residents prefer to obtain surgical services that make up each of the four relevant markets locally. Health plans must therefore include hospitals and ambulatory surgery centers located in the Reading area in their provider networks in order to meet their members' needs and desires for choice. Patients would not go to hospitals or ambulatory surgery centers outside of the Reading area in sufficient numbers to defeat a post-Acquisition anticompetitive rate increase within the Reading area in any of the four relevant service markets. As such, a hypothetical monopolist that controlled all of the relevant facilities in the Reading area could profitably raise rates by at least a small but significant amount.

VI.

MARKET STRUCTURE AND TH

INPATIENT ORTHOPEDIC SURGICAL SERVICES	
Provider	

OUTPATIENT EAR, NOSE, & THROAT SURGICAL SERVICES			
Provider	Market Share (procedures)	Share (by entity)	Post-Acquisition
SIR	35.4%	35.4%	58.2%
SurgiCenter	11.8%	22.8%	
Reading Hospital	11.0%		
Penn. Eye & Ear	26.1%	26.1%	26.1%

OUTPATIENT GENERAL SURGERY			
Provider	Market Share (procedures)	Share (by entity)	Post-Acquisition
Reading Hospital	35.3%	52.4%	71.5%

70. Another barrier to entry or expansion is access to the requisite surgical specialists (*e.g.*, orthopedic and neurosurgeons for the inpatient and outpatient orthopedic surgical service markets, otolaryngologists for the outpatient ENT surgical services market, and general surgeons for the outpatient general surgical services market). Most surgical specialists in the Reading area are already affiliated with a facility and contractually restricted from performing surgeries elsewhere. Even RHS

reversed, that efficiencies rescue an otherwise illegal transaction Here, Respondents did not quantify or even consider efficiencies when contemplating the Acquisition, instead acknowledging that “the acquisition is unlikely to create any significant efficiencies.” Indeed, the likely outcome of the Acquisition is that SIR will be folded into RHS’s less efficient, more bureaucratic structure.

IX.

VIOLATIONS

75. The allegations of Paragraphs 1 through 74 above are incorporated by reference as though fully set forth.

76. The Acquisition, if consummated, may substa

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 answer is filed by the Respondents. 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 answer is filed by the Respondents). Rule 3.31(b) obligates counsel for each party, within five (5) days of receiving the Respondents' answer, 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 Acquisition challenged in this proceeding violates Section 5 of the Federal Trade Commission Act, as amended, and 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. 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 markets, with the ability to offer such products and services as RHS and SIR were offering and planning to offer prior to the Acquisition.

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2. A prohibition against any transaction between RHS and SIR that combines their businesses in the relevant markets, except as may be approved by the Commission.

3. A requirement that, for a period of time, RHS and SIR provide prior notice to the Commission of acquisitions, mergers, consolidations, or any other combinations of their businesses in the relevant markets with any other company operating in the relevant markets.

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 SIR as a viable, independent competitor in the relevant markets.

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 16th day of November, 2012.

By the Commission.

Donald S. Clark
Secretary

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