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I.

NATURE OF THE CASE¹

1. Jeffers denies the allegations of Paragraph 1 of the Complaint, except that Jeffers admits that (a) Jefferson and Einstein provide inpatient J H Q H U D O D F X W H hospital services and inpatient acute rehabilitation services, among other services, Philadelphia and Montgomery Counties, (b) Jefferson and Einstein entered into a System Integration Agreement dated September 14, 2018, whereby Jefferson will become the so member of Einstein and the ultimate parent entity of Einstein W K H 3 7, and (c) the F V Transaction would combine these two hospital systems into one integrated health system

2. Jeffers admits the allegations in the first sentence of Paragraph 2 of the Complaint. Jeffers denies the remaining allegations of Paragraph 2 of the Complaint, except that Jefferson admits that Jefferson and Einstein contract with commercial insurers and provide inpatient G A C V H U Y L F H V W R W K R V H L Q V X U H U V P H P E H U V

3. Jefferson denies the allegations in the first sentence of Paragraph 3 of the Complaint, and specifically denies W K D W - H I I H U V R Q D Q G (L Q V W H L Q V L J Q L I L Jefferson lacks sufficient knowledge or information to affirm or deny the allegations contained in the second, third, and fourth sentences of Paragraph 3 of the Complaint and these allegations are therefore denied. To the extent that the remaining allegations of Paragraph 3 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the remaining allegations of Paragraph 3 of the Complaint.

4. To the extent that Paragraph 4 purports to describe or quote documents and testimony, Jefferson avers that such documents and testimony speak for themselves and, as

¹) R U H D V H R I U H I H U H Q F H - H I I H U V R Q P V \$ Q V Z H U X W L O L J H V W K H

such, no response is required. To the extent a response is required, Jefferson denies that

9. To the extent that Paragraph 9 purports to describe or quote documents and/or testimony, Jefferson avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, Jefferson denies that Paragraph 9 accurately characterizes the quoted documents and/or testimony and denies that the Commission has provided the full context of the documents and/or testimony. Jefferson denies the remaining allegations of Paragraph 9 of the Complaint.

10. To the extent that the allegations of Paragraph 10 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 10 of the Complaint.

11. To the extent that the allegations of Paragraph 11 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson denies the allegations of Paragraph 11 of the Complaint.

12. Jefferson denies the allegations of Paragraph 12 of the Complaint, except that Jefferson admits that Jefferson and Einstein seek to contract with commercial insurers that offer plans to employers and their employees, among others, within the greater Philadelphia region.

13. Jefferson denies the allegations of Paragraph 13 of the Complaint.

14. Jefferson admits that it has provided quality medical services at competitive rates and terms. Jefferson lacks information sufficient to admit or deny the allegations about the quality of the medical services that have been provided by Einstein, or about its rates and terms for such medical services, and these allegations in Paragraph 14 of the Complaint are therefore denied. Jefferson denies the remaining allegations of Paragraph 14 of the Complaint.

15. To the extent that the allegations in the first sentence of Paragraph 15 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required to the

26. Jefferson admits that Einstein is a Pennsylvania not-for-profit corporation that operates an academic health system headquartered in North Philadelphia and that Einstein operates GAC hospitals and inpatient rehabilitation facility. Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 26 of the Complaint, and these allegations are therefore denied.

27. Jefferson admits that Einstein provides inpatient GAC hospital services at several locations in Philadelphia and Montgomery Counties. Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 27 of the Complaint, and these allegations are therefore denied.

28. Jefferson admits that Einstein provides inpatient rehabilitation services through MossRehab at several locations. Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in Paragraph 28 of the Complaint, and these allegations are therefore denied.

B.

The Transaction

29. Jefferson admits the allegations in the first sentence of Paragraph 29 of the Complaint. Jefferson admits that the figure in the second sentence of Paragraph 29 of the Complaint was included in the S D U W E N G F regulatory filings pursuant to the Hart-Scott-Rodino Act for purposes of computation of the filing fee, but denies that this figure represents current or pertinent valuation of Einstein's assets. Jefferson denies the allegations contained in the third sentence of Paragraph 29 of the Complaint, except that Jefferson admits that the combined health system would operate 14 GAC hospital facilities, including 11 in Pennsylvania.



B.

Inpatient Acute Rehabilitation Services

35. To the extent that the allegations of Paragraph 35 state a legal conclusion,

V.

THE RELEVANT GEOGRAPHIC MARKETS

39. To the extent that the allegations of Paragraph 39 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson the allegations of Paragraph 39 of the Complaint, and specifically denies that that relevant geographic markets for analyzing an inpatient GAC hospital services market are the Philadelphia Area and the Montgomery Area and specifically denies that the relevant geographic market for analyzing an inpatient acute rehabilitation services market is the Philadelphia Area.

40. To the extent that the allegations of Paragraph 40 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson c the allegations of Paragraph 40 of the Complaint.

A.

Inpatient GAC Hospital Services Geographic Markets

41. To the extent that the allegations of Paragraph 41 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson the allegations of Paragraph 41 of the Complaint, and specifically denies the definition of the 3 1RUWKHUQ 3KLODGHOSKLD \$UHD´ DQG VSHFLILFDO WKH 3PDLQ DUHD RI FRPSHWLWLRQ´ EHWZHHQ DQ\ R

42. To the extent that the allegations of Paragraph 42 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson the allegations of Paragraph 42 of the Complaint, and specifically denies the definition of the

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43. To the extent that the allegations in the last sentence of Paragraph 43 state conclusion, Jefferson avers that it need not respond. To the extent a response is required last sentence of Paragraph 43, Jefferson denies these allegations. Jefferson denies the remaining allegations in Paragraph 43 the Complaint.

44. To the extent that the allegations in the last sentence of Paragraph 44 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required last sentence of Paragraph 44, Jefferson denies these allegations. Jefferson denies the remaining allegations in Paragraph 44 the Complaint.

B.

Inpatient Acute Rehabilitation Services Geographic Market

45. To the extent that the allegations of Paragraph 45 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required, Jefferson the allegations of Paragraph 45 the Complaint, and specifically denies the definition of the Philadelphia Delaware Valley Inpatient Rehabilitation Services Geographic Market. Jefferson denies the remaining allegations in Paragraph 45 the Complaint.

46. To the extent that the allegations in the last sentence of Paragraph 46 state a legal conclusion, Jefferson avers that it need not respond. To the extent a response is required last sentence of Paragraph 46, Jefferson denies these allegations. Jefferson denies the remaining allegations in Paragraph 46 the Complaint.

VI.

MARKET STRUCTURE AND THE 75 \$ 16 \$ & 7, 21 ¶ 6 35 (6 8 0 3 7, 9 (, // (*

hospital services within the greater Philadelphia region and (b) Jefferson and Einstein are among the providers of inpatient rehabilitation services within the greater Philadelphia region.

65. Jefferson denies the allegations in the first, second, and third sentences of Paragraph 65 of the Complaint. To the extent that Paragraph 65 purports to describe or quote documents and/or testimony, Jefferson avers that the Commission's selective quotation of unidentified and excerpted documents and/or testimony, offered without context, is vague, ambiguous, and grossly misleading as framed. Jefferson further avers that such documents and/or testimony speak for themselves and, as such, no response is required. To the extent a response is required, Jefferson denies the remaining allegations contained in Paragraph 65 of the Complaint.

66. Jefferson denies the allegations in Paragraph 66 of the Complaint, except that Jefferson admits that narrow network products may offer fewer participating hospitals at reduced prices relative to other available provider networks, while they may offer hospitals within the network increased volumes of patients and procedures.

67. Jefferson denies the allegations in Paragraph 67 of the Complaint.

C.

The Transaction Would Eliminate Vital Quality and Service Competition

68. Jefferson denies the allegations in the last sentence of Paragraph 68 of the Complaint as to it. Jefferson lacks sufficient knowledge or information to affirm or deny the remaining allegations contained in the last sentence of Paragraph 68 of the Complaint, and these allegations are therefore denied. Jefferson denies the remaining allegations contained in Paragraph 68 of the Complaint, except that Jefferson admits that there are a number of different health systems in the greater Philadelphia region that compete with either Jefferson or Einstein.

69. Jefferson denies the first sentence of Paragraph 69 of the Complaint to the extent that it alleges any reduction in the quality of medical care as a result of the Transaction, and Jefferson avers that patients will benefit from the merger of Jefferson and Einstein in the quality of care and services they receive. Jefferson denies the allegations of Paragraph 69 of the Complaint.

VIII.

ENTRY BARRIERS

70. Jefferson denies the allegations of Paragraph 70-4.

71. Jefferson denies the allegations of Paragraph 71-10.

72. Jefferson denies the allegations of Paragraph 72-10.

IX.

EFFICIENCIES

73. Jefferson denies the allegations of Paragraph 73-10. Jefferson avers that the Transaction will result in substantial merger-specific savings and efficiencies.

X.

VIOLATION

COUNT I ILLEGAL AGREEMENT

74. In answer to the averments of Paragraph 74 of the Complaint, Jefferson hereby incorporates by reference its responses to Paragraphs 74(h)-9(a) and 74(e)(r)-16 of the Complaint.

Jefferson denies the allegations of Paragraph 74-10.

COUNT II ILLEGAL ACQUISITION

76. In answer to the averments of Paragraph 76 of the Complaint, Jefferson hereby incorporates by reference its responses to each and every averment contained in Paragraphs 1 through 73 of the Complaint as if set forth fully herein.

77. Jefferson denies the allegations contained in Paragraph 77 of the Complaint.

AFFIRMATIVE DEFENSES

Jefferson asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Commission:

1. The Complaint fails to state a claim on which relief can be granted.
2. Granting the relief sought is contrary to the public interest.
3. The alleged relevant service market for inpatient general acute care hospital services fails as a matter of law.
4. The alleged relevant service market for inpatient acute rehabilitation services fails as a matter of law.
5. The alleged relevant geographic markets for inpatient GAC hospital services fail as a matter of law.
6. The alleged relevant geographic market for inpatient acute rehabilitation services fails as a matter of law.
7. The Complaint fails to allege any plausible harm to competition.
8. The Complaint fails to allege any plausible harm to any consumers or to consumer welfare.

9. New entry and expansion by competitors can be timely, likely, and sufficient, and such ease of entry will ensure that there will be no harm to competition, patients and consumers, or consumer welfare.

10. The insurers and other payors at issue in the Complaint have a variety of tools to ensure that they receive competitive pricing and terms for the products and services at issue in the Complaint.

11. The combination of Jefferson's and Einstein's hospital systems will be procompetitive, and will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects, all of which will directly benefit patients and consumers throughout the greater Philadelphia region. Jefferson does not concede any of the anticompetitive effects proffered by the Commission; moreover, the foregoing precompetitive benefits are substantial and will greatly outweigh any and all alleged anticompetitive effects.

12. The proposed Transaction is subject to the weakened competitor and/or failing firm defenses. For this reason, among others, the proposed Transaction is procompetitive and will directly benefit patients, including those in the most vulnerable areas of the greater Philadelphia region.

RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES

Jefferson has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. Jefferson reserves the right to amend, or seek to amend, its answer or affirmative defenses.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, Thomas Jefferson University requests that the Commission enter judgment in its favor as follows:

- A. The Complaint be dismissed with prejudice;
- B. None of the Complaint's contemplated relief issues to the FTC;
- C. Costs incurred in defending this action be awarded to Respondents; and
- D. Any and all other relief as the Commission may deem just and proper.

Dated: March 12, 2020

Respectfully submitted,

/s/ Kenneth M. Vorrasi

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Notice of Electronic Service

I hereby certify that on March 12, 2020, I filed an electronic copy of the foregoing Answer and Affirmative Defenses of Respondent Thomas Jefferson University, with:

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I hereby certify that on March 12, 2020, I served via E-Service an electronic copy of the foregoing Answer and Affirmative Defenses of Respondent Thomas Jefferson University, upon:

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