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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America and the State of Arizona, Plaintiffs, v. Arizona Hospital and Healthcare Association and AzHHA Service Corporation, Defendants.	CASE NO. CV07-1030-PHX-JAT **UNITED STATES' CERTIFICATE OF COMPLIANCE WITH TUNNEY ACT**

UNITED STATES' CERTIFICATE OF COMPLIANCE WITH TUNNEY ACT

Plaintiff the United States hereby certifies that it has complied with the provisions of Section 5 of the Clayton Act, as amended by Section 2 of the Antitrust Procedures and Penalties Act (codified at 15 U.S.C. §§ 16(b)-(h) ("Tunney Act")), and states:

1. Pursuant to 15 U.S.C. § 16(b), a proposed Final Judgment against the Defendants, and a Stipulation consenting to the entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, were filed with the Court on May 22, 2007. (Dkt #2)

2. On July 26, 2007, the defendant submitted a certificate of compliance with the requirements of 15 U.S.C. § 16(g). (Dkt #10)

3. Pursuant to 15 U.S.C. § 16(b), the Competitive Impact Statement was filed with the Court on May 22, 2007. (Dkt #3)

4. Pursuant to 15 U.S.C. § 16(b), the proposed Final Judgment and the Competitive Impact Statement were published in the Federal Register on June 4, 2007, at 72 Fed. Reg. 30832-845 (2007). A copy of the Federal Register Notice is attached as Exhibit 1.

5. Pursuant to 15 U.S.C. § 16(c), a summary of the terms of the proposed Final Judgment and the Competitive Impact Statement were published in The Washington Post for seven consecutive days, from June 13, 2007, through June 19, 2007. This notice was also published in the Arizona Republic for seven consecutive days, from June 17, 2007, through June 23, 2007. Copies of the Proofs of Publication from The Washington Post and the Arizona Republic are attached as Exhibits 2 and 3.

6. The 60-day period for public comments on the proposed Final Judgment, specified in 15 U.S.C. § 16(d), commenced on June 23, 2007, and expired on August 22, 2007.

7. The United States received no comments on the proposed Final Judgment.

Pursuant to the Stipulation filed on May 22, 2007, this Court may enter the proposed Final Judgment after it determines that the proposed Final Judgment satisfies the public interest standard of 15 U.S.C. § 16(e). The United States' Competitive Impact Statement (Dkt #3) demonstrates that the proposed Final Judgment is in the public interest.

Dated: September 7, 2007

/s/ Ryan Danks

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CERTIFICATE OF SERVICE

I hereby certify that on September 7, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants, and further provided copies to the registrants via electronic mail:

Nancy Bonnell, Antitrust Unit Chief, ID #016382
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/s/ Ryan Danks
Ryan Danks
United States Department of Justice
Antitrust Division

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in these investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference. The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on June 19, 2007, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (*202–205–3187/fred.ruggles@usitc.gov*) not later than June 15, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before June 22, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: May 29, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–10684 Filed 6–1–07; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–919 and 920 (Review)]

Welded Large Diameter Line Pipe From Japan and Mexico

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year reviews.

DATES: *Effective Date:* Date of Commission action.

FOR FURTHER INFORMATION CONTACT: Dana Lofgren (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On February 22, 2007, the Commission established a schedule for the conduct of the subject reviews (72 FR 9357, March 1, 2007). Due to a subsequent scheduling conflict, however, the Commission is revising its schedule. Under the Commission's new schedule for the reviews, the hearing will be held at the U.S. International Trade Commission building at 9:30 a.m. on July 25, 2007. The Commission's original schedule is otherwise unchanged.

For further information concerning the conduct of these reviews and rules of general application, see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These five-year reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 29, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–10685 Filed 6–1–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States of America, et al. v. Arizona Hospital and Healthcare Association, et al.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. Section 16(b) through (h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of the District of Arizona in *United States of America, et al.* v. *Arizona Hospital and Healthcare Association, et al.*, Civil Action No. 2:07–cv–1030. On May 22, 2007, the United States filed a

Complaint alleging the Arizona Hospital and Healthcare Association and its subsidiary, the AzHHA Service Corporation, violated Section 1 of the Sherman Act, 15 U.S.C. § 1. The proposed Final Judgment, filed the same time as the Complaint, requires the Defendants to terminate their illegal agreements and to end their illegal rate-setting and information-sharing activities, and to create a program to monitor their compliance with the antitrust laws. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, DC in Room 215, 325 Seventh Street, NW., at the Office of the Clerk of the United States District Court for the District of Arizona, in Phoenix, and via the internet at *http://www.usdoj.gov/atr/cases.html*.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Joseph M. Miller, Acting Chief, Litigation I Section, United States Department of Justice, Suite 4000, 1401 H Street, NW., Washington, DC 20530, (telephone: 202–307–0001).

J. Robert Kramer, II,

Director of Operations, Antitrust Division.

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Attorneys for the State of Arizona

United States District Court

District of Arizona

United States of America and the State of Arizona, Plaintiffs, v. Arizona Hospital and Healthcare, Association and AzHHA Service, Corporation, Defendants.

[Case No. CV07–1030–PHX]

Complaint

1. The United States of America, acting under the direction of the Attorney General of the United States, and the State of Arizona, acting under the direction of the Attorney General of the State of Arizona, bring this civil actio to obtain equitable and other relief against Defendants Arizona Hospital and Healthcare Association (''AzHHA'') and its subsidiary the AzHHA Service Corporation to restrain Defendants' violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and the State of Arizona seeks relief also under Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402.

I. Introduction

2. AzHHA, through its subsidiary the AzHHA Service Corporation, runs the AzHHA Registry Program (''AzHHA Registry''), a group purchasing organization, which contracts with nursing agencies to provide temporary nursing services for most Arizona hospitals. Through the Registry, AzHHA and its participation member hospitals have jointly set prices and other terms governing the hospitals' purchases of per diem and travel nursing services.

3. For nearly ten years after AzHHA started the Registry in 1988, it focused on setting uniform quality standards for per diem and travel nursing personnel, and enforcing those standards through regular audits. During this time, AzHHA allowed each participating agency that employed per diem and travel nurses to set its own bill rates, provided that the agency offered the same rates to every hospital participating in the Registry. Since 1997, however, AzHHA has imposed the same bill rates on each participating agency, which the agency must offer each participating hospital.

4. Acting collectively on behalf of most of the hospitals in Arizona, AzHHA has set bill rates below the levels its member hospitals could otherwise have achieved by negotiating independently with each agency. AzHHA also has imposed other noncompetitive contractual terms on participating agencies.

5. Efficiencies do not explain or justify the Registry's conduct. Agencies have not obtained significant transactional efficiencies or scale economies as a result of the imposition of uniform bill rates by the Registry. The Registry's practice of imposing uniform bill rates has not been reasonably necessary to achieve any benefits, such as greater quality assurance. Neither agencies nor hospitals have acted as though the Registry's rate setting creates efficiences.

6. Through this suit, the United States and the State of Arizona ask this Court to declare the Defendant's conduct illegal and enter injunctive relief to prevent further violations of the antitrust laws.

II. Defendants

7. AzHHA is a nonprofit corporation existing under the laws of the State of Arizona and headquartered in Phoenix. The association describes itself as dedicated to providing leadership on issues affecting the delivery, quality, accessibility, and cost effectiveness of healthcare. Active members of AzHHA include more than 100 hospitals and health systems in Arizona. Executives from member hospitals control the AzHHA Board of Directors.

8. The AzHHA Service Corporation is a for-profit corporation existing under the laws of the State of Arizona and is a wholly owned subsidiary of AzHHA; it is also headquartered in Phoenix. The AzHHA Service Corporation runs the AzHHA Registry, which helps member hospitals purchase the services of temporary healthcare personnel, including per diem and travel nurses. Executives from AzHHA member hospitals control the AzHHA Service Corporation Board of Directors.

III. Jurisdiction and Venue

9. The Court has subject-matter jurisdiction over this action under 15 U.S.C. § 4 and 15 U.S.C. § 26, which authorize the United States and the State of Arizona, respectively, to bring actions in district courts to prevent and restrain violations of Section 1 of the Sherman Act, 15 U.S.C. § 1. Subject matter jurisdiction also exists pursuant to 28 U.S.C. §§ 1331, 1337.

10. Venue is proper in the District of Arizona, under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(b) & (c), because the defendant corporations reside there.

11. The Court has jurisdiction over the State of Arizona's claim under the Uniform Arizona Antitrust Act, A.R.S. §§ 44–1402, et seq., under the doctrine of pendent jurisdiction, 28 U.S.C. § 1367.

IV. Conspirators

12. Various firms and individuals, not named as defendants in this Complaint, have knowingly participated as conspirators with Defendants in the violation alleged in this Complaint, and have done acts and made statements in furtherance of the alleged conspiracy.

V. Trade and Commerce

13. Arizona hospitals employ various types of nursing personnel to treat and care for patients. Hospitals are the primary employers in Arizona of registered nurses (RNs), who must graduate from an approved professional nursing program to obtain a license in Arizona. Specialty RNs are RNs who receive additional education and training and become certified to practice in a specialty unit, such as critical care, neonatal intensive care, or telemetry. Specialty RNs and RNs account for most of the nursing staff employed by

Arizona hospitals. Besides RNs and specialty RNs, Arizona hospitals employ several other types of nursing personnel, including licensed practical nurses (LPNs), certified nursing assistants (CNAs), operating room technicians, behavioral health technicians, and sitters.

14. Arizona hospitals frequently cannot meet their nursing needs with their own regularly employed nurses. Hospitals cannot meet their needs because of, for example, temporary absences of the hospitals' regularly employed nursing staff, daily variations in hospitals' censuses, an influx of visitors to Arizona during the winter months, and a rapidly increasing population.

15. Most Arizona hospitals try to fill their needs for nursing services by having their regularly employed nurses work overtime and by using internal pools of employees who ''float'' among units as needed (and as qualified). Some Arizona hospitals also maintain their own in-house list of nurses who may be available to work at the hospitals temporarily.

16. These measures do not satisfy the hospitals' demands for nursing services. At such times, the hospitals will purchase the services of temporary nursing personnel through nurse staffing agencies. Temporary nursing personnel fall usually into two categories: per diem nurses and travel nurses.

17. Per diem nurses are typically local nurses who work on short notice to fill hospitals' immediate needs on a single shift. In contrast, travel nurses contract to work at hospitals for longer periods, usually thirteen weeks. Unlike per diem nurses, travel nurses generally live outside Arizona and receive short-term housing in Arizona while employed there. Arizona hospitals purchase the services of travel nurses to satisfy their demand for nursing services, including responding to the influx of seasonal residents, and covering planned absences of regularly employed nursing staff, such as those on maternity leave. Along with California, Florida, and Texas, Arizona hospitals have the highest demand for travel nursing services.

18. Nurse staffing agencies coordinate most placements of per diem and travel nurses with Arizona hospitals. Many nurse staffing agencies focus on providing either per diem or travel nurses. Arizona hospitals pay agencies an hourly bill rate for the work done by the agencies' nursing personnel. Agencies pass most of that bill rate directly to nursing personnel as wages and benefits, and allocate the balance to their overhead and profit. Temporary nurses' compensation is directly correlated to the bill rate paid by hospitals to nurse staffing agencies, and a decrease in temporary nursing agency bill rates results in lower compensation for temporary nurses.

19. Dozens of nurse staffing agencies work with hospitals in Arizona. Before the Registry, Arizona hospitals used to compete on price with each other to purchase temporary nursing services from nurse staffing agencies.

20. Some hospitals use third parties to coordinate their procurement of temporary nursing personnel from multiple nurse staffing agencies. Until 2004, the AzHHA Registry Program was the only major provider of such services in Arizona.

VI. The AzHHA Nurse Registry Program

21. The AzHHA Registry operates separate registries for per diem nursing personnel in Northern Arizona (mainly Phoenix) and Southern Arizona (mainly Tucson), together called the ''Per Diem Registry.'' The Registry also operates a registry for travel nursing personnel throughout Arizona, called the ''Travel Registry.'' These registries cover various types of nursing personnel, including RNs, specialty RNs, LPNs, CNAs, operating room technicians, behavioral health technicians, and sitters.

22. Since 2000, most of AzHHA's member hospitals have purchased services of temporary nursing personnel through the AzHHA Registry. In 2005, 65 Arizona hospitals participated in at least one part of the Registry. The hospitals then participating in the Per Diem Registry controlled approximately 80 percent of hospital beds in the Phoenix area and approximately 84 percent of hospital beds in the Tucson area. Hospitals then participating in the Travel Registry controlled approximately 78 percent of all hospital beds in Arizona. From May 2004 to May 2005, these hospitals purchased approximately 850,000 hours of per diem nursing services (worth about $43 million) and approximately 2.3 million hours of travel nursing services (worth about $116 million) through the AzHHA Registry.

23. The AzHHA Registry began in 1988 with a focus on quality assurance. The Registry seeks to provide quality assurance by establishing standards for agencies' temporary nursing personnel and agencies' personnel recordkeeping requirements. AzHHA employees monitor the agencies' quality assurance through annual audits. These audits verify that each agency properly maintains files on its nursing personnel's education, background, work experience, skill level, and references.

24. Hospitals participating in the AzHHA Registry commit to turn first to participating agencies when purchasing temporary nursing services. If the participating agencies cannot fill a participating hospital's needs promptly, then a hospital may purchase services from a nonparticipating agency, provided that its total purchases of per diem nursing services remain above 50 percent. Most participating hospitals have fulfilled this contractual obligation and have purchased most of their temporary nursing services through the Registry. Overall, participating hospitals have purchased about 70 percent of their per diem nursing services through the Registry. The Travel Registry has accounted for about 90 percent of travel nurse agency sales to hospitals in Arizona.

25. The participating hospitals regularly meet to select agencies to participate in the AzHHA Registry. In 2005, the participating hospitals selected approximately 80 different nurse staffing agencies to participate in at least one part of the Registry, out of approximately 170 completed applications.

26. The AzHHA Service Corporation has collected an administrative fee from each agency based on the amount that each agency bills hospitals through the Registry. For per diem personnel, AzHHA has collected a flat 2 percent fee. For travel nurses, AzHHA has collected fees based on a tiered structure starting at 2 percent and decreasing to 0.5 percent, depending on the total amount an agency bills participating hospitals. The fees collected from the agencies fund the Registry and other AzHHA activities.

27. When the AzHHA Registry began, each participating agency submitted a set of standard bill rates that the agency agreed to charge all participating hospitals. Starting from the bill rates submitted by an agency, each hospital could then individually negotiate discounted bill rates with each agency.

28. In 1997, with the support of participating hospitals, AzHHA began collectively setting the rates agencies could bill hospitals through the Per Diem Registry. To do so, AzHHA began requiring all participating agencies to accept a uniform bill rate schedule, set by the Registry, for all participating hospitals. In 1998, AzHHA imposed a similar, uniform rate schedule for the Travel Registry.

29. The AzHHA Registry has formulated uniform nurse agency bill rates through a three-step process. First,

AzHHA employees surveyed the bill rates from each participating agency, averaged the rates, and forwarded the averaged rate information to participating hospitals. Each hospital then provided its own desired agency bill rates to AzHHA. Finally, AzHHA set the uniform agency bill rates, based only on the average rates submitted by participating hospitals.

30. At the insistence of the CEOs of several participating hospitals, AzHHA employees sometimes prepared and circulated usage reports detailing hospitals' usage of per diem personnel though the Per Diem Registry, and outside it. The reports included estimates of the cost of hiring per diem personnel outside the Registry. In May 2002, participating hospitals agreed to expel any hospital using participating agencies for less than 50 percent of its total per diem hours. This new rule affected six hospitals. Four hospitals responded by immediately increasing their use of participating agencies to at least 50 percent of their total per diem needs. One system, comprising two hospitals, chose to leave the Per Diem Registry rather than face expulsion.

31. In 2005, AzHHA altered the Per Diem Registry's rate structure by eliminating the bill rate differential between weekday and weekend shifts. In addition, AzHHA significantly reduced overtime and holiday bill rates. AzHHA made these changes over objections from many participating agencies. Several per diem agencies subsequently left the Registry.

32. AzHHA has taken other steps to further coordinate how participating hospitals deal with agencies. The AzHHA Registry contract requires participating agencies to accept certain competitively sensitive contract provisions relating to, among others, payment terms between participating hospitals and participating agencies, indemnification, and cancellation policies. AzHHA also gathers from and shares with participating hospitals competitively sensitive information such as bonuses offered to temporary nursing personnel.

33. In November 2006, while under investigation by the Plaintiffs and defending a private antitrust action, AzHHA reverted to its pre-1997 approach to pricing for the Per Diem Registry. It now requires each agency to submit bill rates that it will charge all participating hospitals. The revised pricing method applies only to per diem agencies, and AzHHA retains the right to reject an agency's rate submission. The Travel Registry continues to impose a uniform bill rate schedule applicable to all participating hospitals' purchases from travel nurse staffing agencies.

VII. Interstate Commerce

34. The activities of the Defendants that are the subject of this Complaint are within the flow of, and have substantially affected, interstate trade and commerce.

The AzHHA Service Corporation has transmitted contracts to nurse staffing agencies across state lines and has communicated with nurse staffing agencies by mail and telephone across state lines. AzHHA employees have traveled across state lines to audit nurse staffing agencies.

36. The Travel Registry contracts with agencies that arrange for nurses to travel from outside Arizona to provide temporary nursing services in Arizona hospitals.

37. Many AzHHA member hospitals that purchase services from nurse staffing agencies through the AzHHA Registry remit substantial payments across state lines to nurse staffing agencies. Nurse staffing agencies also remit substantial payments in the form of administrative fees across state lines to the AzHHA Service Corporation.

VIII. Relevant Markets

A. Hospitals' Purchases of Per Diem Nursing Services in the Phoenix and Tucson Metropolitan Areas

38. Per diem nursing services is a relevant service market within the meaning of the antitrust laws.

39. Positions as regularly employed RNs at hospitals are generally not attractive alternatives for per diem nurses because they do not offer the scheduling flexibility or pay attractive to per diem nurses. Many per diem nurses work part-time as secondary wage earners for their families and highly value flexible work schedules. Per diem nurses generally are paid higher hourly wages compared to regularly employed nursing staff, but typically do not receive benefits such as health insurance or retirement contributions. Although some per diem nurses also work full-time at a hospital, many do not.

40. Nursing positions in non-hospital settings tend to pay even lower wages, are generally less prestigious, and usually offer less professionally challenging work environments than RN positions in hospitals. Thus hospital per diem nurse openings are generally more attractive than per diem nurse openings in other settings, such as in-home nursing visits or care, physician offices, freestanding outpatient care facilities, skilled-nursing facilities, schools, and prisons. Moreover, there are relatively few employment opportunities for per diem nurses in non-hospital settings.

41. The Per Diem Registry has collectively imposed per diem bill rates below competitive levels, and lowered the compensation paid to per diem nurses. Those reduced bill rates have not induced per diem nurses to stop offering their services in sufficient quantities to make the reduction in bill rates unprofitable. Purchases of per diem nursing services by hospitals is, therefore, a relevant service market. This service market aggregates, for analytic convenience, several relevant service markets, including hospitals' purchases of discrete types of temporary nursing services, such as per diem medical/surgical RN services, various per diem specialty RN services, per diem LPN services, and per diem CNA services.

42. The Phoenix and Tucson metropolitan areas are relevant and distinct geographic markets, within the meaning of the antitrust laws, for the purchase of per diem nursing services.

43. Phoenix and Tucson are distinct relevant geographic markets for the purchase of per diem nursing services in part because they are located about 120 miles from each other. Per diem nurses generally must live within a reasonable commute of the hospitals where they work to ensure their work is profitable and they are available on short notice. In Arizona, per diem nurses generally reside in either Phoenix or Tucson and live in the metropolitan area where they work. More distant hospitals are not good substitutes for per diem nurses living in the Phoenix or Tucson metropolitan areas.

44. The Per Diem Registry consequently has operated distinct purchasing programs centered in Phoenix and Tucson. Participating hospitals and per diem nurse staffing agencies have considered the Phoenix and Tucson metropolitan areas to be distinct markets for the purchase of per diem nursing personnel services, and the Registry has priced them differently.

45. The Per Diem Registry has collectively imposed per diem bill rates below competitive levels in Phoenix. Those reduced bill rates have not induced per diem nurses in Phoenix to stop offering their per diem services in Phoenix in sufficient quantities to make the reduction in bill rates unprofitable. Similarly, the reduced bill rates in Tucson have not induced per diem nurses to stop offering their per diem services in that city in sufficient quantities to make the reduction in bill rates there unprofitable.

B. Hospitals' Purchases of Travel Nursing Services in Arizona

46. Travel nursing services is a relevant service market within the meaning of the antitrust laws.

47. No other nursing position offers the benefits that travel nursing provides: temporary residence in a new or attractive are of the country, the ability to work near friends or relatives in the area, and the chance to try out a hospital for future long-term employment. Travel nurses usually earn a higher hourly rate than regularly employed nurses, and often receive health benefits and paid vacation from their agency. Many hospitals in Arizona also pay travel nurses through their agencies bonuses upon completion of their assignments.

48. The Travel Registry has collectively imposed travel bill rates below competitive levels and lowered the compensation to travel nurses. Those reduced bill rates have not induced travel nurses to stop offering their services in sufficient quantities to make the reduction in bill rates unprofitable. Purchases of travel nursing services by hospitals in Arizona is, therefore, a relevant service market. This service market aggregates, for analytic convenience, several relevant service markets, including hospitals' purchases of discrete types of travel nursing services, such as medical/surgical RN services, and various specialty RN services.

49. Arizona is a relevant geographic market, within the meaning of the antitrust laws, for the purchase of travel nursing services.

50. Most of the thousands of travel nurses throughout the country have strong preferences for assignments in a particular location at any given time. A substantial number of travel nurses prefer Arizona over other warm-weather locations with high demands for travel nurses, such as Southern California, Texas, and Florida. Nurses prefer Arizona for any number of reasons, including previous work experience, preferred recreational opportunities, and proximity to friends and relatives. Also, Arizona, unlike California and Florida, is a member of the multistate Nurse Licensure Compact. This means that nurses licensed in Compact states face lower transaction costs to provide services in Arizona, and incur higher costs when choosing Florida or California instead of Arizona for their thirteen-week travel assignments.

51. Travel nurse agencies' experiences in Arizona further corroborate that Arizona is a relevant market for travel nurses. Starting in 1998, the Travel Registry collectively imposed bill rates in Arizona lower than they would have been absent the Registry, while hospitals in comparable states continued to pay relatively higher bill rates. That change has had a significant negative effect on the margins of the travel nurse agencies and reduced somewhat the hourly wages those agencies paid to travel nurses working in Arizona. Despite the travel Registry's adverse effects, travel nurse agencies have not been able to steer a sufficient number of travel nurses to other states to defeat the small but significant nontransitory decrease imposed by the Travel Registry on travel nurse billing rates in Arizona.

52. For instance, in 1998, one of the nation's largest travel nurse agencies, which provided a substantial number of travel nurses to AzHHA participating hospitals, withdrew from the Travel Registry in response to the collectively imposed bill rates. Because about 90 percent of travel nursing services sold by travel nurse agencies in Arizona are purchased by hospitals through the Travel Registry, the travel nurse agency was effectively shut out of Arizona hospitals. The agency found that it could not redirect nurses with a preference for Arizona in sufficient numbers to other states, and so lost business to other agencies. The travel nurse agency was ultimately forced to rejoin the travel Registry and accept its collectively imposed bill rats.

53. The Travel Registry has collectively imposed travel bill rates below the competitive levels in Arizona. Those reduced bill rates have not induced travel nurses to stop offering their travel nursing services in Arizona in sufficient quantities to make the reduction in bill rates unprofitable.

IX. Market Power

54. As of 2005, the Arizona hospitals that participated in the Per Diem Registry controlled approximately 80 percent of all hospital beds in the area in and around Phoenix and approximately 84 percent of all hospital beds in the area in and around Tucson. (The number of hospital beds serves as a proxy for the demand for nursing services.) As the dominant purchasers of per diem nursing services in the areas in and around both Phoenix and Tucson, the hospitals participating in the Registry possessed market power in those relevant markets.

55. As of 2005, the Arizona hospitals that participated in the Travel Registry controlled approximately 78 percent of all hospital beds in Arizona. As the dominant purchasers of travel nursing services in Arizona, the hospitals participating in the Registry possessed market power in that relevant market.

56. The high percentage of Arizona hospitals that participate in the AzHHA Registry has allowed the Registry to impose uniform rates and noncompetitive contract terms, despite objections from many large nurse staffing agencies in Arizona, because there are not enough alternative purchasers of per diem and travel nursing services to thwart AzHHA's exercise of market power. Indeed, the managers of the Registry have recognized that the ''more [hospitals they] can bring into the program the more purchasing power [the hospitals] can have as a group.'' In communications to its member hospitals, AzHHA executives have ''emphasize[d] the importance of functioning as a group,'' and stressed that the Registry's ''strength lies in the group's ability to stay consistent in [its] purchasing decisions when contracting for agency nurses, including travelers.''

X. Anticompetitive Effects

57. Through the Registry, AzHHA and its participating hospitals have decreased prevailing wages for temporary nursing personnel below competitive levels.

58. By AzHHa's own estimate, the AzHHA Registry has forced agency bill rates below competitive levels. In communications to other state hospital associations and to its own member hospitals, AzHHA has admitted that participating hospitals paid much lower bill rates for temporary nursing services than they would have paid absent the Registry. In advertising materials, AzHHA has estimated the bill rates its member hospitals paid agencies were as much as 12 percent lower than they would have been if agencies had been able to negotiate competitively with hospitals. AzHHA has reported to participating hospitals that the bill rates paid through the Per Diem Registry were 9 percent to 16 percent lower than they otherwise would have been. (The elimination of shift differentials and reduced overtime and holiday rates imposed since 2005 further lowered the effective per diem agency bill rates.) In its communications, AzHHA has reported similar savings, 7 percent or more, in the bill rate paid through the Travel Registry. In sum, AzHHA has estimated that participating hospitals lowered payments to nurse staffing agencies by 10 to 12.7 million dollars per year through the reduced bill rates provided by the AzHHA Registry. Notably, AzHHA has attributed these savings to its collective price-setting and

not to any administrative or transactional efficiencies.

59. Hospitals have recognized that the AzHHA Registry forced agency bill rates below competitive levels. Indeed, multiple hospitals, including two of the largest hospital systems in Arizona, concluded that leaving the Registry would have forced them to pay much higher rates for temporary nursing personnel. Instances where participating hospitals have left the Registry confirm that hospitals usually have paid higher bills rates outside it. In the last two years, several hospitals have left the Registry and signed contracts with AzHHA competitors; the new contracts generally have included higher bill rates for agencies.

60. Temporary nurse staffing agencies in Arizona have observed that AzHHA forced bill rates below competitive levels. Agencies that were not part of the Registry, including several former participating agencies, have received higher bill rates from the hospitals through arrangements outside the Registry. A comparison of per diem rates done several years ago by AzHHA showed that the bill rates paid by AzHHA hospitals to agencies operating outside the Per Diem Registry ranged from 5 percent to 40 percent higher than the Registry's rates. Still, many agencies have continued to participate in the Registry because they feared that failure to do so would effectively exclude them from the Arizona market, namely, the more than 3 million temporary nursing hours paticipating hospitals purchase through the Registry each year. Agencies that left the Registry Program have reported sharp declines in their overall sales.

61. To maintain agency bill rates below competitive levels, AzHHA has monitored participating hospitals' use of nonparticipating nurse staffing agencies and directed hospitals to increase their purchases of temporary nursing services through the Registry using the collectively determined, depressed bill rates. For instance, in March 2000, an AzHHA representative warned hospitals that ''[t]he more that non-contract agency usage increase, the less powerful our contract becomes because agencies will drop and follow suit with 'higher bill rate' agencies. The final result would be the Registry Program ceasing to exist.''

62. As a result of the Registry's lowering bill rates paid to nurse staffing agencies, those agencies have paid temporary nurses lower wages. Thus temporary nurses hired through the Registry have earned a lower hourly wage rate than temporary nurses not hired through the Registry.

63. The low agency bill rates imposed by AzHHA and resulting lower wages have reduced agencies' ability to recruit temporary nurses. The Registry's reduced agency bill rates and the resulting lower temporary nurse wages likely have distorted the incentives of hospitals and nurses, with significant long-run adverse consequences to the overall supply and mix of nursing services in Arizona.

64. The AzHHA Registry's downward effect on agency bill rates and nursing personnel wages has not resulted from efficiency-enhancinig behavior.

65. The transactional efficiencies and scale economies AzHHA claims the Registry has generated do not account for, nor are they produced by, the lower bill rates the Registry has imposed on participating agencies. Some transactional efficiencies may have accrued to participating agencies because they can deal with most of the market through a single contact. But the anticompetitive effects of the AzHHA Registry have substantially outweighed any potential transactional efficiencies that have accrued to the temporary nursing agencies.

66. The Registry also has not created significant economies of scale accruing to agencies because those agencies have not obtained appreciable per unit reductions in cost because of their participation in the AzHHA Registry, much less as a result of the Registry's collective rate setting. The Registry has not resulted in an increase in the supply of temporary nurses in Arizona.

67. AzHHA's imposition of uniform rate schedules and other competitively sensitive contract terms was not reasonably necessary to achieve any efficiencies that may have resulted from the Registry's credentialing and quality-assurance activities. AzHHA conducted its quality-assurance activities for nearly a decade before it began setting uniform bill rates. Its adoption of uniform rate schedules starting in 1997 did not relate to the Registry's quality-assurance process. In November 2006, AzHHA ceased imposing uniform agency bill rates through the Per Diem Registry while maintaining the same quality-assurance activities, which reconfirmed that uniform pricing is not reasonably necessary to achieve the Registry's quality-assurance goals.

XI. Violations Alleged

68. AzHHA, the AzHHA Service Corporation, and AzHHA's participating member hospitals, acting through the AzHHA Registry Program, agreed to fix certain terms and conditions relating to the purchase of temporary nursing personnel, including temporary nurse staffing agency bill rates.

69. The agreement among AzHHA, the AzHHA Service Corporation, and AzHHA's participating member hospitals, acting through the AzHHA Registry Program, has caused and continues to cause:

i. A reduction in competition for hospitals' purchases of per diem nursing services in and around Phoenix, Arizona, and accompanying reductions in bill rates paid to temporary nursing agencies and wages paid to per diem nurses in that area;

ii. A reduction in competition for hospitals' purchases of per diem nursing services in and around Tucson, Arizona, and accompanying reductions in bill rates paid to temporary nursing agencies and wages paid to per diem nurses in that area;

iii. A reduction in competition for Arizona hospitals' purchases of services provided by travel nurses, and accompanying reductions in bill rates paid to temporary nursing agencies and wages paid to travel nurses in that state; and, in view of these effects, Defendants' actions have violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402.

XII. Request for Relief

70. To remedy the violations of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402, alleged herein, the United States and the State of Arizona request that the Court:

i. Adjudge the Defendants AzHHA and AzHHA Service Corporation as constituting and having engaged in an unlawful combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402;

ii. Order that the Defendants AzHHA and AzHHA Service Corporation, their officers, directors, agents, employees, and successors, and all others acting or claiming to act on their behalf, be permanently enjoined from engaging in, carrying out, renewing, or attempting to engage in, carry out, or renew the combination and conspiracy alleged herein or any other combination or conspiracy having a similar purpose or effect in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402,

iii. Award costs of this action; and

iv. Such other and further relief as may be required and the Court may deem just and proper.

Dated: May 22, 2007.

Thomas O. Barnett, Assistant Attorney General, Antitrust Division.
J. Robert Kramer II, Director of Operations, Antitrust Division.
Joseph M. Miller, Acting Chief, Litigation 1 Section, Antitrust Division.
Ryan Danks, Steven Kramer, Seth A. Grossman, Rebecca Perlmutter,
Attorneys, Litigation I Section,
United States Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, Telephone: (202) 305–0128, Facsimile: (202) 307–5802.
Terry Goddard, Attorney General, Nancy Bonnell, Antitrust Unit Chief (Arizona Bar #016382),
Consumer Protection and Advocacy Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, AZ 85007, Telephone: (602) 542–7728, Facsimile (602) 542–9088.

Certificate of Service

I hereby certify that on May 22, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Nancy Bonnell, Antitrust Unit Chief, ID #016382, Consumer Protection and Advocacy Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, AZ 85007–2997, (602) 542–7728.
Attorney for the State of Arizona
Andrew S. Gordon, Coopersmith Gordon Schermer & Brockelman PLC, 2800 North Central Avenue, Suite 1000, Phoenix, AZ 85004, (602) 381–5460, Facsimile: (602) 224–6020,
Attorney for the Defendants.
Ryan Danks, United States Department of Justice, Antitrust Division.
United States of America and the State of Arizona, Plaintiffs, v. Arizona Hospital and Healthcare Association and AzHHA Service Corporation, Defendants

[Case No. CV07–1030–PHX]

Final Judgment

Exhibit A

Whereas, Plaintiffs, United States of America and the State of Arizona, filed their Complaint on May 22, 2007, alleging Defendants' violation of Section I of the Sherman Act, 15 U.S.C. § 1, and the State of Arizona has also alleged Defendants' violated Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402, and Plaintiffs and Defendants, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by Defendants, or any other entity, as to any issue of fact or law;

And whereas, the essence of this Final Judgment is the prohibition of certain agreements on bill rates and competitively sensitive contract terms, and actions coordinating and supporting those agreements, by the Arizona Hospital and Healthcare Association, its subsidiary the AzHHA Service Corporation, and their participating member hospitals;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ordered, adjudged and decreed:

I. Jurisdiction

This Court has jurisdiction over the subject matter of and the parties to this action. Defendants stipulate that the Complaint states a claim upon which relief may be granted against Defendants under Section I of the Sherman Act, as amended, 15 U.S.C. § 1, and A.R.S. § 44–1402.

II. Definitions

As used in this Final Judgment,

A. ''AzHHA'' means the Arizona Hospital and Healthcare Association, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. ''AzHHA Service Corporation'' means the AzHHA Service Corporation, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''Competitively Sensitive Contract Terms'' means those contractual terms, and any information related to those terms, that, as specified in Section IV(A) of this Final Judgment, cannot be included in the Program Contract and must be negotiated independently between each Participating Hospitals and each Participating Agency.

D. ''Defendants'' means AzHHA and the AzHHA Service Corporation, jointly or individually.

E. ''Non-Participating Agencies'' means temporary staffing agencies that sell services to Participating Hospitals or other AzHHA members outside the Registry Program.

F. ''Participating Agencies'' means temporary staffing agencies that sell services to Participating Hospitals through the Registry Program.

G. ''Participating Hospitals'' means hospitals or hospitals systems that are members of AzHHA that use the Registry Program to purchase Temporary Nursing Personnel.

H. ''Per Diem Registry'' means the Registry Program used by Participating Hospitals for the purchase of Temporary Nursing Personnel on an ad hoc or as needed basis, including both the Northern and Southern regions of the Registry Program.

I. ''Program Contract'' means any contract used by the Defendants to set the terms and conditions of the contractual relationship between Participating Hospitals and Participating Agencies for the Per Diem Registry and the Travel Registry.

J. ''Registry Program'' means the program for the purchase of Temporary Nursing Personnel through the Per Diem Registry or the Travel Registry operated by the AzHHA Service Corporation, or any such program operated by AzHHA or the AzHHA Service Corporation in the future.

K. ''Temporary Nursing Personnel'' means registered nurses, licensed practical nurses, certified nurse assistants, operating room technicians, behavioral health technicians, and sitters whom offer their services on a temporary basis.

''Travel Registry'' means the Registry Program used by Participating Hospitals for the purchase of Temporary Nursing Personnel for thirteen weeks or longer.

III. Applicability

This Final Judgment applies to AzHHA, the AzHHA Service Corporation, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

A. The Defendants shall not include in any Program Contract any provision setting, prescribing, or imposing, directly or indirectly:

1. Rates paid by Participating Hospitals to Participating Agencies, including the process or manner by which Participating Agencies submit, negotiate, or contract for rates with Participating Hospitals;

2. A common rate structure, including shift differentials;

3. Payment terms between Participating Hospitals and Participating Agencies;

4. Any cancellation policy or penalty for cancellation by Participating Hospitals or Participating Agencies;

5. The payment of bonuses by Participating Hospitals or Participating Agencies; or,

6. Any requirement or encouragement of Participating Hospitals to give

priority to or deal with Participating Agencies, including any minimum usage requirements of Participating Hospitals or Participating Agencies.

B. The Defendants shall not:

1. Impose on, encourage, facilitate, induce, or require, directly or indirectly, Participating Hospitals to (a) use any Registry Program or Participating Agencies exclusively, or grant right of first refusal to any Registry Program or Participating Agencies, (b) boycott, exclude, refuse to deal with, or discriminate against Non-Participating Agencies, or (c) meet any minimum requirements for use of Participating Agencies, or (c) meet any minimum requirements for use of Participating Agencies; except that the Defendants may promote features of the Registry Program to Participating Hospitals, Participating Agencies, and other persons, provided such promotion does not include rebates or other financial incentives for participation;

2. Require, encourage, or induce Participating Agencies to deal with Participating Hospitals through the Registry Program;

3. Encourage, facilitate, induce, participate in, or undertake any understanding or agreement among AzHHA members or Participating Hospitals (a) to adopt the Program Contract or participate in the Registry Program, or (b) regarding Competitively Sensitive Contract Terms;

4. Provide any rebates or other direct financial incentives to Participating Hospitals to encourage or increase their participation in the Registry Program or use of Participating Agencies, except that, if the Defendants change the Registry Program so that fees are paid by Participating Hospitals rather than by Participating Agencies, then the fee structure may recognize Participating Hospitals' volume of usage of the Register Program;

5. Receive, gather, or collect Competitively Sensitive Contract Terms, except for such Competitively Sensitive Contract Terms as are necessary to operate the Register Program, provided access to the Competitively Sensitive Contract Terms obtained is restricted to those AzHHA employees performing ministerial tasks for the Register Program;

6. Communicate, convey, announce, share, or disseminate to any AzHHA member, Participating Hospital, or Participating Agency; the Competitively Sensitive Contract Terms of any other AzHHA member, Participating Hospital Participating Agency;

7. Select, or consider selection of, agencies for participation in the Registry Program, directly or indirectly, on the basis of Competitively Sensitive Contract Terms;

8. Select, or consider selection of, agencies for participation in the Registry Program based on the amount of hours provided to Participating Hospitals through Registry Program before or after the entry of this Final Judgment, except that the Defendants may establish a required annual minimum volume of commerce, measured by the aggregate fees paid to the Defendants by a Participating Agency, which agencies must meet to continue their participation in the Registry Program, provided that those requirements are uniformly applied to all Participating Agencies and are based on the objective costs of operating the Registry Program; or,

9. Communicate, convey, announce, share, or disseminate information regarding Registry Program usage by Participating Hospitals or Participating Agencies, except that the Defendants may tabulate and disseminate the total annual usage of the Registry Program by all Participating Hospitals.

V. Mandated Conduct

The Final Judgment is effective upon entry, except that the Defendants shall have ninety days (90) days from entry to amend the Program Contract to comply with Section IV(A)(1)–(6) of this Final Judgment.

VI. Permitted Conduct

A. Subject to Sections IV and V of this Final Judgment, the Program Contract may:

1. Establish definitions of nurse types, e.g., ''specialty'' and ''non-specialty'';

2. Establish payment terms between the Registry Program and Participating Agencies, including any participation fees;

3. Establish a credentialing program, including auditing and file retention requirements required of Participating Agencies;

4. Establish requirements for personnel hired from Participating Agencies, including background checks, drug panel screens, and prior experience;

5. Establish insurance and indemnification requirements to be met by Participating Agencies; and

6. Allow Participating Hospitals and Participating Agencies to independently and individually negotiate and reach agreement on Competitively Sensitive Contract Terms.

B. The Defendants may:

1. Solicit information and views from Participating Hospitals about the Registry Program or the Program Contract, so long as the Defendants do so consistently with Sections IV and V of this Final Judgment, and do not share any Participating Hospital's information or views about any Competitively Sensitive Contract Terms with any other Participating Hospital;

2. Establish the terms of the Program Contract, and create mechanisms for its administration, consistently with Sections IV, V and VI(A) of this Final Judgment;

3. Meet with Participating Hospitals to choose criteria for selecting Participating Agencies, provided those criteria conform with the requirements given in Section IV(A) of this Final Judgment and the meetings are conducted in accordance with the prohibitions found in Section IV(B) of this Final Judgment;

4. Communicate with Participating Hospitals the results of audits of file reviews performed on Participating Agencies; and

5. Communicate to Participating Hospitals or Participating Agencies any information or message from a Participating Hospital or Participating Agency, provided that the communication does not otherwise violate Section IV of this Final Judgment.

C. Nothing in this Final Judgment shall prohibit AzHHA or its members, the AzHHA Service Corporation, Participating Agencies, or Participating Hospitals, from advocating or discussing, in accordance with the doctrine established in *Eastern Railroad Presidents Conference* v. *Noerr Motor Freight, Inc.,* 365 U.S. 127 (1961), *United Mine Workers* v. *Pennington,* 381 U.S. 657 (1965), and their progeny, any legislative, judicial, or regulatory actions, or other governmental policies or actions.

VII. Antitrust Compliance and Notification

A. AzHHA shall establish an Antitrust Compliance Office, including appointment of an Antitrust Compliance Officer (''Antitrust Compliance Officer'') within thirty (30) days of entry of this Final Judgment, and a successor within thirty (30) days of entry of this Final Judgment, and a successor within thirty (30) days of a predecessor's vacating the appointment. Each Antitrust Compliance Officer appointed shall not have had previous involvement with the Registry Program prior to the entry of this Final Judgment.

B. Each Antitrust Compliance Officer appointed pursuant to Section VII(A) shall be responsible for establishing and implementing an antitrust compliance program for the Defendants and ensuring the Defendants' compliance

with this Final Judgment, including the following:

1. The Defendants shall furnish a copy of this Final Judgment (a) within thirty (30) days of entry of this Final Judgment to each of Defendants' directors and officers, and each employee of the Defendants who is involved in the Registry Program, and (b) within thirty (30) days of their appointment to each person who succeeds to any such position.

2. Within thirty (30) days of furnishing a copy of this Final Judgment to any person pursuant to Section VII(B)(1), the Defendants shall obtain from such person a signed certification that the person has read, understands, and agrees to comply with the provisions of this Final Judgment, to the best of his/her knowledge at the time the certification is made is not aware of any violations of this Final Judgment by Defendants that has not already been reported to the Antitrust Compliance Officer, and understands that failure to comply with this Final Judgment may result in conviction for criminal contempt of court.

3. Upon learning of any potential violation of any provision of this Final Judgment, the Antitrust Compliance Officer shall forthwith take appropriate action to terminate or modify the activity so as to comply with this Final Judgment. Any such action shall be reported in the annual compliance report required by Section VII(B)(4) of this Final Judgment.

4. For each year during the term of this Final Judgment, on or before the anniversary date of this Final Judgment, the Antitrust Compliance Officer shall file with the Plaintiffs a report as to the fact and manner of its compliance with the provisions of this Final Judgment.

5. The defendants shall furnish a copy of this Final Judgment to each current Participating Hospital and current Participating Agency, and shall in the future furnish a copy of this Final Judgment to new Participating Hospitals or Participating Agencies within thirty (30) days of their agreement to the Program Contract. The Defendants shall require all Participating Hospitals to furnish a copy of this Final Judgment to managerial employees involved in hiring or contracting Temporary Nursing Personnel within thirty (30) days of entry of this Final Judgment or of succeeding to the position. Within forty-five (45) days of entry of this Final Judgment, the Defendants shall require each Participating Hospital to certify that it has received copy of this Final Judgment and has furnished a copy of this Final Judgment to managerial employees then involved in temporary nurse hiring or contracting.

VIII. Compliance Inspection

A. For purposes of determining or securing compliance with this Final Judgment, or of determining whether this Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the Plaintiffs, including consultants and other persons retained by the United States or the State of Arizona, shall, upon written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, or the Attorney General of the State of Arizona, and on reasonable notice to the Defendants be permitted:

1. Access during the Defendants' office hours to inspect and copy, or at the option of the Plaintiffs, to require the Defendants to provide copies of all documents, as defined by Rule 34 of the Federal Rules of Civil Procedure, in the possession, custody, or control of the Defendants, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, the Defendants' officers, employees, agents, or other representatives, who may have their individual counsel present, regarding such matters. Any interview shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Defendants.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the antitrust Division, or the Attorney General of the State of Arizona, the Defendants shall submit written reports and interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment, as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. No information or documents obtained by the means provided in this section shall be divulged by the State of Arizona to any person other than an authorized representative of the executive branch of the State of Arizona, except in the course of legal proceedings to which the State of Arizona is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

E. When information or documents are furnished by the Defendants to the Plaintiffs, if the Defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then the Plaintiffs shall give Defendants ten (10) calendar days notice prior to divulging such material in any legal proceeding other than a grand jury proceeding.

IX. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of this provisions.

X. Term

This Final Judgment shall expire ten (10) years after the date of its entry.

XI. Public Interest Determination

The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' response to comments. Based upon the record before this Court, which includes the Competitive Impact Statement and any comments and response to comments filed with this Court, entry of this Final Judgment is in the public interest.

Dated: _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

United States District Judge

Ryan Danks, Steven Kramer, Seth Grossman, Rebecca Perlmutter,

U.S. Department of Justice Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0001,

Attorneys for the United States.

United States of America and the State of Arizona, Plaintiffs, v. Arizona Hospital and Healthcare Association and AzHHA Service Corporation, Defendants.

[Case No. CV07–1030–PHX]

Competitive Impact Statement

Plaintiff United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding. The Plaintiffs in this case lodged the proposed Final Judgment with this Court on May 22, 2007, for eventual entry in this civil antitrust proceeding, following the parties' compliance with the APPA, and if this Court determines, pursuant to the APPA, that the proposed Final Judgment is in the public interest.

I. Nature and Purpose of the Proceeding

The United States, accompanied by the State of Arizona, filed a civil antitrust complaint on May 22, 2007, alleging that Defendants Arizona Hospital and Healthcare Association and AzHHA Service Corporation (collectively ''AzHHA''), by operation of their Registry for hospitals' purchases of temporary nursing services, violated Section 1 of the Sherman Act, 15 U.S.C. § 1. The State of Arizona has also alleged that the Defendants violated Section 44–1402 of Arizona's Uniform State Antitrust Act, A.R.S. § 44–1402. Through the Registry, AzHHA and participating member hospitals agreed to set uniform bill rates and other competitively sensitive contract terms for the purchase of temporary nursing services from nurse staffing agencies.

The United States, the State of Arizona, and AzHHA have stipulated that this court may enter the proposed Final Judgment after compliance with the APPA. Entry of the proposed Final Judgement would terminate the action, except that this Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations of it.

II. Description of Events Giving Rise to the Alleged Violation

A. The Market for Temporary Nursing Services in Arizona

Nurses providing services on a temporary basis generally fall into two categories, per diem nurses and travel nurses. Per diem nurses are local nurses who typically work on short notice to fill the immediate needs of nearby hospitals. Travel nurses work for hospitals for longer periods, usually thirteen weeks, and generally live outside Arizona. They usually receive short-term housing near the hospital where they work. Although all hospitals use temporary nursing services to cover needs created by illness, census fluctuations, and planned absences, Arizona hospitals have a particular need for temporary nursing services because of an annual influx of wintertime tourists and residents into the state.

Hospitals purchase temporary nursing services through nurse staffing agencies, which are the per diem and travel nurses' direct employers. A hospital will convey its needs for temporary nurse staffing to agencies, which in turn try to fill those needs with available nurses.

Besides acting as clearinghouses, agencies recruit nurses, conduct background checks, maintain administrative and employment-related records, and compensate nurses.

Agencies bill hospitals hourly for work done by the agencies' nurses. Agencies pass most of the bill rates directly to their nursing personnel as wages and benefits, and use the remainder for overhead and profit.There is a direct correlation between bill rates and nurse wages: when bill rates change, so do wages.

B. The Formation and Operation of the AzHHA Registry

AzHHA started the AzHHA Registry in 1988 to help member hospitals impose minimum quality standards on temporary nursing personnel hired from nurse staffing agencies. AzHHA began with the Per Diem Registry, which focused on credentialing per diem nursing personnel in two distinct regions: Northern Arizona (for participating hospitals around Phoenix) and Southern Arizona (for participating hospitals around Tucson). The next year AzHHA began the Travel Registry, which focused on credentialing travel nursing personnel and worked with participating hospitals throughout Arizona.

Hospitals that participate in the AzHHA Registry met once a year or more to discuss its operation and select which nurse staffing agencies would participate. In addition, AzHHA staff have talked with employees of participating hospitals about bill rates and other competitively sensitive contract terms, and shared the results of those conversations with employees of other hospitals. AzHHA employees sought agreement among participating hospitals before changing the Registry's operations or its contract terms.

The Registry focused on quality-assurance and credentialing activities for its first ten years. It required nurse staffing agencies to, among other things, keep updated records of nurses' certifications, perform drug tests, and conduct background checks. AzHHA monitored the agencies' compliance through annual audits performed by AzHHA employees. To pay for these activities, AzHHA has charged agencies participating in the Per Diem Registry a fee of two percent of their sales to participating hospitals. (The Travel Registry has charged a similar fee, but allows for discounts depending on the amount of sales agencies make to participating hospitals.)

Between 1988 and 1997, the AzHHA Registry allowed participating agencies to set their own bill rates, provided that they agreed to offer the same bill rates to every hospital. In 1997, with the approval of participating hospitals, AzHHA restructured the Per Diem Registry to further coordinate bill rates and other contract terms with its member hospitals. Under the new system, the Per Diem Registry and its participating hospitals agreed to require all participating agencies to accept the same maximum bill rate from all participating hospitals, which it established through an annual three-step process. First, AzHHA surveyed the participating agencies' desired rates and averaged their responses. AzHHA then forwarded those averages to the participating hospitals and asked what prices they were willing to pay. Finally, AzHHA averaged the hospitals' responses and imposed those averages as the new bill rates for the Per Diem Registry. In 1998, AzHHA and the participating hospitals extended this new pricing scheme to the Travel Registry.

Between 1998 and 2005, AzHHA attempted to keep participating hospitals and participating agencies from negotiating deals outside the Registry or abandoning the Registry entirely. AzHHA always required participating hospitals to try to purchase nursing services first from participating agencies, and deal with other agencies only after participating agencies failed to meet their needs. But this requirement did not stop some participating hospitals from reaching agreements with agencies outside the Registry; and in 2002, to prevent the Registry's collapse, AzHHA and its participating hospitals agreed to expel any participating hospital that did not use the Per Diem Registry for at least 50 percent of its per diem nursing services needs. At the participating hospitals' request, AzHHA monitored compliance

with this rule, including gathering and distributing reports detailing each member hospital's usage. These reports revealed that after 2002 participating hospitals purchased 70 percent of their per diem nursing needs through the Per Diem Registry.

AzHHA's member hospitals may choose to participate in the Per Diem Registry, the Travel Registry, or both. Over time, more hospitals joined the AzHHA Registry: By 2005, 65 hospitals participated in either the Travel or Per Diem Registry, or both. The hospitals participating in the Per Diem Registry that year controlled about 80 percent of the hospital beds in the Phoenix area and about 84 percent of the hospital beds in the Tucson Area. Hospitals participating in the Travel Registry that year controlled about 78 percent of hospital beds statewide. Through the Per Diem Registry, hospitals purchased about 850,000 nursing hours annually, totaling approximately $43 million; through the Travel Registry, hospitals purchased about 2.3 million nursing hours annually, totaling approximately $116 million.

In 2005, after AzHHA and participating hospitals imposed new bill rate structures on agencies participating in the Per Diem Registry, including reduced overtime and weekend shift pay, many of the largest participating agencies left the Per Diem Registry. Finally, in 2006, while under investigation by the United States and the State of Arizona, and facing a private antitrust lawsuit, AzHHA returned the Per Diem Registry to its pre-1997 pricing model. To date, AzHHA has not revised the Travel Registry's pricing model. The Per Diem Registry's current pricing system, like the one in effect until 1997, has allowed some price comeptition among agencies, but it still has reduced price competition among participating hospitals purchasing temporary nursing services.

C. The Relevant Markets for Temporary Nursing Personnel

''Per diem nursing'' is a relevant service market. Per diem work offered to nurses by nurse staffing agencies is distinct from work offered directly to nurses by hospitals. Because of the distinctive appeal of per diem work, when the Per Diem Registry caused bill rates to be lower, per diem nurses in Phoenix and tucson accepted the resulting stagnant or lower wages and did not switch to other types of work in sufficient quantities to render such a reduction in wages unprofitable.

There are at least two relevant geographic markets for per diem nursing services in Arizona. Phoenix and Tucson are the center of two separate geographic markets for per diem nursing services because nurses selling per diem services are commonly hired on short notice, for one or perhaps several days of work, and so will not commute more than about 75 miles.

''Travel nursing'' is a relevant service market. Travel work offered to nurses is distinct from all other types of work available. Because of the distinctive nature of travel work, when the Travel Registry caused bill rates to be lower, travel nurses in Arizona accepted the resulting stagnant or lower wages and did not switch to other types of work in sufficient quantities to render such a reduction in wages unprofitable.

Arizona is the relevant geographic market for travel nursing services. Travel nurse agencies have not been able to defeat AzHHA's collectively imposed bill rates because of the number of travel nurses who strongly prefer Arizona hospitals, whether due to climate, location of friends and family, previous work experience, or other factors. In addition, Arizona, unlike the two other states with the largest demand for travel nurses, California and Florida, is a member of a multistate nurse licensing compact. This compact allows nurses licensed in compact states to accept a thirteen week assignment in Arizona without the licensure hurdles imposed by California and Florida. Travel nurse agencies incur lower margins to contract with participating hospitals through the Travel Registry, and have not been able to steer travel nurses to other states in sufficient numbers to defeat AzHHA's collectively imposed bill rates. One of the nation's largest travel nurse agencies left the Travel Registry in 1998, but was unable over the following two years to redirect sufficient numbers of nurses to assignments outside Arizona to sustain the withdrawal.

D. The Competitive Effects of the AzHHA Registry

Because most Arizona hospitals participated in the AzHHA Registry, it has been able, by acting collectively, to exercise market power in both the per diem and travel nurse markets. The Per Diem Registry has accounted for about 70 percent of participating hospitals' purchases of per diem nursing services, and the Travel Registry has accounted for about 90 percent of travel nurse agency sales of travel nursing services to hospitals in Arizona. The Registry and its participating hospitals have imposed on nurse staffing agencies contract terms, including but not limited to lower bill rates, that those agencies would otherwise have been able to successfully resist.

AzHHA has lowered bill rates for temporary nursing services below competitive levels and allowed participating hospitals to impose lower bill rates on participating agencies than the hospitals would have been able to negotiate on their own. AzHHA has recognized and promoted these reduced bill rates as a benefit of participating in the Registry. Participating hospitals have recognized and viewed these reduced bill rates as a reason to join or stay in the Registry, in addition to the benefits they claim to receive from the Registry's quality-assurance process. As an immediate consequence of reducing bill rates below the competitive level, AzHHA has also caused the wages paid to temporary nurses to decrease below competitive levels.

AzHHA has enforced participation in the price-setting function of the Registry. It tried initially to do so through its ''first use'' policy, which required participating hospitals to deal with participating agencies before non-participating ones. This met with limited success, but ultimately proved inadequate to restrain some participating hospitals' purchases outside the Per Diem Registry. As a result, the Registry then adopted a rule that each participating hospital had to use the Per Diem Registry for at least 50 percent of its per diem nurse purchases. Thus, hospitals cannot freely make additional purchases outside the Registry because they must maintain a 50-percent usage rate—for every purchase outside the Registry they must make another purchase within it. Finally, AzHHA expels hospitals that fail to meet and maintain the 50-percent usage level, thus depriving the hospitals of access to the reduced rates negotiated with the agencies and also of participation in the Registry's quality-assurance process, which the hospitals assert they value. Two years after one of the nation's largest travel nurse agencies left the Travel Registry in 1998, it rejoined the Travel Registry when it found that it lost significant market share in Arizona and was hurt in its national efforts to recruit travel nurses because it could not offer sufficient opportunities for those nurses to work in Arizona.

The absence of efficiencies corroborates the anticompetitive nature of this suppression of bill rates for temporary nursing services. ''Volume discounts'' do not explain the lower prices the AzHHA Registry has commanded because it has not created any substantial volume-related efficiencies that allow agencies to

significantly reduce their per unit (or per nurse-hour) costs. Participating agencies have not generated significant cost savings related to the volume of services they have provided through the Registry.

Nor do the efficiencies AzHHA has claimed for the AzHHA Registry generally explain or justify the rate reductions it has imposed on agencies. To the extent there are savings from negotiating and administering contract terms that are not competitively sensitive, such savings are minor. Moreover, any savings agencies have accrued from their participation in AzHHA's quality-assurance process do not justify the anticompetitive rate agreements: AzHHA's operations in both the Per Diem and Travel Registry before 1997, and the Per Diem Registry since November 2006, have demonstrated that agreements on competitively sensitive terms, including bill rates, are not reasonably necessary for AzHHA, participating hospitals, or participating agencies to create quality assurance savings. In addition to evidence showing that these various specific efficiencies do not justify the reduction in bill rates, there is generally no evidence of any increase in the availability of temporary nurse services in the relevant markets as a result of the Registry. All relevant evidence has pointed in the opposite direction.

In short, the cost savings accruing to participating agencies have not accounted for the reduction in bill rates imposed by the concerted action of the Registry and its participating hospitals, nor for the reduction in the wages paid to temporary nurses.

E. The Antitrust Laws Apply to Agreements Among Buyers

Buyers as well as sellers may violate the antitrust laws. ''Conceptually, monopsony power is the mirror image of monopoly power.'' Department of Justice Antitrust Division & Federal Trade Commission, Improving Health Care: A Dose of Competition, ch. 6, at 13 (2004). As Judge Posner has explained, ''[j]ust as a sellers' cartel enables the charging of monopoly prices, a buyers' cartel enables the charging of monopsony prices; and monopoly and monopsony are symmetrical distortions of competition from an economic standpoint.'' *Vogel* v. *American Soc. of Appraisers*, 744 F.2d 598, 601 (7th Cir. 1984). And as the Supreme Court has recently recognized, similar legal standards apply to these same basic economic principles. *Weyerhaeuser Co.* v. *Ross-Simmons Hardwood Lumber Co.*, 549 U.S. —, 127 S.Ct. 1069, 1076 (2007) (noting the ''close theoretical connection between monopoly and monopsony'' and that ''[t]he kinship between monopoly and monopsony suggests that similar legal standards should apply to claims of monopolization and to claims of monopsonization''); *see also North Jackson Pharmacy, Inc.* v. *Caremark RX, Inc.*, 385 F. Supp. 2d 740, 747 (N.D. III. 2005); Blair & Harrison, *Antitrust Policy and Monopsony*, 76 Cornell Law Rev. 297, 300 (1991).

The Supreme Court has also recognized that agreements among buyers do not necessarily violate the antitrust laws, and, in some cases, they may promote consumer welfare. In *Northwest Wholesale Stationers*, in the context of reviewing a non-price agreement among buyers, the Court recognized that the agreement could help create economies of scale in purchasing and logistics, and help smaller buyers compete more effectively with larger stores by ensuring access to inventory that otherwise might not be available when it was needed *Northwest Wholesale Stationers, Inc.* v. *Pacific Stationery and Printing Co.*, 472 U.S. 284, 295 (1985).

Some group purchasing agreements may lower the price participating buyers pay for goods and services without creating deadweight losses. For example, the purchasing agreement may guarantee a specific volume of purchases that allows sellers to realize economies of scale and lower their average cost of production. Because the sellers' costs are lower, they can accept a lower price from the buyers taking part in the group purchasing agreement without reducing production. Thus both the buyers and sellers may benefit from the buyers' agreement, or at least be no wore off than they were previously. *Cf. Broadcast Music, Inc.* v. *Columbia Broadcasting System, Inc.*, 441 U.S. 1, 21 (1979) (noting that the substantially lowered costs created by blanket licensing is ''potentially beneficial to both buyers and sellers''); see also Blair & Harrison, *Public Policy: Cooperative Buying, Monopsony Power, and Antitrust Policy*, 86 Nw. U. Law Rev. 331, 338 (1992) (concluding that both buyers and sellers should benefit from an efficiency-enhancing buying cooperative).

On the other hand, a buyers' cartel forces sellers to accept prices below that those sellers would receive in a competitive market, or are otherwise not explained by sellers' efficiencies, because the cartel members collectively exercise market power. *See, e.g., Telcor Communications, Inc.* v. *Southwestern Bell Telephone Co.,* 305 F.3d 1124, 11347–36 (10th Cir. 2002). Just as the collective exercise of seller-side market power absent sufficient countervailing efficiencies will violate section 1 of the Sherman Act, the Act prohibits the collective exercise of buyer-side monopsony power.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will prohibit AzHHA and persons with notice of the Final Judgment acting in concert with AzHHA, including hospitals, from reaching agreement on bill rates and other competitively sensitive contract terms. It will also prohibit AzHHA and such persons acting in concert with AzHHA from boycotting, discriminating against, or excluding hospitals or agencies that choose not to participate in the Registry, or from boycotting or discriminating against hospitals based on the extent of their participation in the Registry. While accomplishing these goals, the proposed Final Judgment will allow AzHHA to continue is quality-assurance activities.

Sections III–VII of the proposed Final Judgment prescribe what conduct by AzHHA and others is prohibited, and what is permitted.

Section III applies the proposed Final Judgment, when entered, to AzHHA and the AzHHA Service Corporation. The language found in Section III tracks that found in Federal Rule of Civil Procedure 65(d), which governs the scope of injunctions entered by this Court. It confirms that the applicability of the proposed Final Judgment extends to the limits of this Court's jurisdiction, and includes in its reach any person or company *not a party,* with notice of the Final Judgement, who acts in concert with AzHHA to violate the terms of the proposed Final Judgment.

Section IV(A) prohibits AzHHA from including in the Registry contracts any competitively sensitive contract terms, including those relating to bill rates, rate structures, payment terms between hospitals and agencies, cancellation policies, bonuses paid to nurses, and ''first use'' policies. These prohibitions will prevent AzHHA and its participating hospitals from jointly negotiating bill rates or other competitively sensitive contract terms.

Section IV(B) prohibits AzHHA and those acting in concert with AzHHA from circumventing the proposed Final Judgment, engaging in other anticompetitive activity, or exercising market power through the Registry. Section IV(B) prohibits exclusionary behavior or boycotts and stops AzHHA from establishing minimum usage levels for the Registry. It also prohibits AzHHA from collecting competitively sensitive

information, except to the extent that such information is required to operate the Registry, and flatly prohibits AzHHA from sharing a Registry participant's competitively sensitive information with any hospital, agency, or other third party. Finally, Section IV(B) requires that AzHHA select participating agencies on the basis of their compliance with the quality assurance activities and not on the basis of any competitively sensitive information, like bill rates.

Section V requires AzHHA to comply with the proposed Final Judgment upon entry by this Court, except for Section IV(A)(1)–(6). The proposed Final Judgment grants AzHHA ninety (90) days from entry of the proposed Final Judgment to comply with Section IV(A)(1)–(6) by amending the Registry's contract to remove competitively sensitive contract terms. The 90-day setback will allow AzHHA to make an orderly transition to a compliant contracting system while still enabling relief much more reliably, quickly, and inexpensively than would result from litigation.

Section IV of the proposed Final Judgment clarifies the scope of the prohibitions in Sections IV and V by identifying specified activities that those sections do not prohibit. Section VI(A) lists terms that AzHHA may include in the Registry contracts, and Section VI(B) describes actions AzHHA may take to operate the Registry. Section VI(A) and (B) are not intended to be exclusive lists of actions permitted to AzHHA.

Section VII of the proposed Final Judgment establishes an antitrust compliance and notification scheme. It requires AzHHA to appoint an Antitrust Compliance Officer, and ensure that AzHHA's officers and employees, as well as participating hospitals and agencies, receive copies of the proposed Final Judgment after it has been entered.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. § 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. § 16(a)), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against the Defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States, the State of Arizona, and Defendants have stipulated that the proposed Final Judgment may be entered by this Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon this Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impace Statement, whichever is later. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to this Court's entry of judgment. The comments and the United States' response to them will be filed with this Court and published in the Federal Register.

Written comments should be submitted to: Joseph M. Miller, Acting Chief, Litigation I Section, Antitrust Division, United States Department of Justice, 1401 H Street NW., Suite 4000, Washington, DC 20530

The proposed Final Judgment provides that this Court retains jurisdiction over this action, and the parties may apply to this Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a continuing investigation and potential full trial on the merits. The United States could also have sought preliminary and permanent injunctions against the operation of the entire Registry. The United States is satisfied, however, that the prohibitions and requirements required by the proposed Final Judgment will reestablish competition in the markets for temporary nursing services.

The United States also considered, as an alternative to the proposed Final Judgment, continuing the investigation and naming the participating hospitals as defendants. The United States is satisfied, however, that the proposed Final Judgment, including Section III, will adequately reestablish competition in the relevant markets for temporary nursing services.

The United States also considered requiring the Defendants comply with Section IV(A) of the proposed Final Judgment within sixty (60) days. Ultimately, the United States concluded that it was reasonable to allow the Defendants 90 days to make an orderly transition to a new Program Contract, and that giving immediate effect to the prohibitions on cartel maintenance found in Section IV(B) was adequate immediate relief.

Entry of the proposed Final Judgment will avoid the time, expense, and uncertainty of litigation or a full trial on the merits.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In 2004, Congress amended the APPA to ensure that courts take into account the above-quoted list of relevant factors when making a public interest determination. Compare 15 U.S.C. § 16(e) (2004) with 15 U.S.C. § 16(e)(1) (2006) (substituting ''shall'' for ''may'' in directing relevant factors for court to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment

terms). On the points next discussed, the 2004 amendments did not alter the substance of the Tunney Act, and the pre-2004 precedents cited below remain applicable.

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel 648 F.2d at 666 (emphasis added) (citations omitted); Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); see generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' ''). In making its public interest determination, a district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requries a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F.Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''[t]he court is nowhere compelled to go to trail or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather:

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977); *see also United States* v. *SBC Commc'ns, Inc.,* Nos. 05–2102 and 05–2103, 2007 WL 1020746, at *9 (D.D.C. Mar. 29, 2007) (confirming that 2004 amendments to the APPA ''effected minimal changes[ ] and that th[e] Court's scope of review remains sharply proscribed by precedent and the nature of [APPA] proceedings.'').

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: May 22, 2007.

Respectfully submitted,

Ryan Danks,
Steven Kramer,
Seth Grossman,
Rebecca Perlmutter,
Attorneys, Litigation I Section,
United States Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0001.

Certificate of Service

I hereby certify that on May 22, 2007, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Nancy Bonnell, *Antitrust Unit Chief, ID #016382, Consumer Protection and Advocacy Section, Department of Law Building, Room #259, 1275 West Washington Street, Phoenix, AZ 85007–2997, (602) 542–7728, Attorney for the State of Arizona.*

Andrew S. Gordon, *Coppersmith Gordon Schermer & Brockelman PLC, 2800 North Central Avenue, Suite 1000, Phoenix, AZ 85004, (602) 381–5460, Facsimile: (602) 224–6020, Attorney for the Defendants.*

Ryan Danks,

United States Department of Justice, Antitrust Division.

[FR Doc. 07–2686 Filed 6–1–07; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 21, 2006, and published in the **Federal Register** on December 1, 2006, (71 FR 69592), Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003

AFFIDAVIT OF PUBLICATION

THE ARIZONA REPUBLIC

6830

Legals

Department of Justice
Antitrust Division

Take notice that a proposed Final Judgment as to the Arizona Hospital and Healthcare Association and the AzHHA Service Corporation has been filed in a civil antitrust case, United States of America et al. v. Arizona Hospital and Healthcare Association, et al., Civil No. 2:07-cv-1030. On May 22, 2007, the United States filed a Complaint alleging the Arizona Hospital and Healthcare Association, and its subsidiary, the AzHHA Service Corporation, violated Section 1 of the Sherman Act, 15 U.S.C. § 1. The proposed Final Judgment, filed the same time as the Complaint, requires the Defendants to terminate their illegal agreements and end their illegal rate-setting and information-sharing activities, and create a program to monitor their compliance with the antitrust laws. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 215, 325 Seventh Street, N.W., at the Office of the Clerk of the United States District Court for the District of Arizona, in Phoenix, and via the internet at http://www.usdoj.gov/atr/cases.html.

Interested persons may address comments to Joseph M. Alioto, Esq., Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 3000, Washington, D.C. 20530.

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STATE OF ARIZONA
COUNTY OF MARICOPA } SS.

Mark Gilmore, being first duly sworn, upon oath deposes and says: That he is a legal advertising representative of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published at Phoenix, Arizona, by Phoenix Newspapers Inc., which also publishes The Arizona Republic, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates as indicated.

The Arizona Republic

June 17-23, 2007

Mark A Gilmore

Sworn to before me this
28TH day of
June A.D. 2007

OFFICIAL SEAL
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NOTARY PUBLIC-ARIZONA
PINAL COUNTY
My Comm. Expires Dec. 2, 2007

Gloria Saldivar
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PROOF OF PUBLICATION

District of Columbia, ss., Personally appeared before me, a Notary Public in and for the said District, Nicole McKinney well known to me to be Assistant Billing Manager of The Washington Post, a daily newspaper published in the City of Washington, District of Columbia, and making oath in due form of law that an advertisement containing the language annexed hereto was published in said newspaper on the dates mentioned in the certificate herein.

I Hereby Certify that the attached advertisement was published in The Washington Post, a daily newspaper, upon the following dates at a cost of $3,661.68, and was circulated in the Washington metropolitan area.

Published 7 times. Dates: June 13, 14, 15, 16, 17, 18 and 19, 2007
Account 632270

Witness my hand and official seal this 31st day of October 20 07

My commission expires

Nicole Morton-McFadden
Notary Public District of Columbia
My Commission Expires 05-31-2011

U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
Take notice that a proposed Final Judgment as to the Arizona Hospital and Healthcare Association and the AzHHA Service Corporation has been filed in a civil antitrust case, United States of America et al. v. Arizona Hospital and Healthcare Association, et al., Civil No. 2:07-cv-1030. On May 22, 2007, the United States filed a Complaint alleging the Arizona Hospital and Healthcare Association, and its subsidiary, the AzHHA Service Corporation, violated Section 1 of the Sherman Act, 15 U.S.C. § 1. The proposed Final Judgment, filed the same time as the Complaint, requires the Defendants to terminate their illegal agreements and end their illegal rate-setting and information-sharing activities, and create a program to monitor their compliance with the antitrust laws. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies available to private litigants who may have been injured by the alleged violation. Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice in Washington, D.C. in Room 215, 325 Seventh Street, N.W., at the Office of the Clerk of the United States District Court for the District of Arizona, in Phoenix, and via the internet at http://www.usdoj.gov/atr/cases.html.
Interested persons may address comments to Joseph M. Miller, Acting Chief, Litigation I Section, United States Department of Justice, Suite 4000, 1401 H Street, NW, Washington, D.C., 20530, within 60 days of the date of this notice.