UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA and STATE OF MICHIGAN, *Plaintiffs*, v. W.A. FOOTE MEMORIAL HOSPITAL, D/B/A ALLEGIANCE HEALTH, *Defendant*.	Case No.: 5:15-cv-12311-JEL-DRG Hon. Judith E. Levy Mag. Judge David R. Grand

COMPETITIVE IMPACT STATEMENT

Plaintiff the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment concerning W.A. Foote Memorial Hospital, d/b/a Henry Ford Allegiance Health ("Allegiance") submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On June 25, 2015, the United States and the State of Michigan filed a civil antitrust Complaint alleging that Allegiance, Hillsdale Community Health Center ("HCHC"), Community Health Center of Branch County ("Branch"), and ProMedica Health System, Inc. ("ProMedica") violated Section 1 of the Sherman

Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772. Concerning Allegiance, the Complaint alleged that Allegiance entered into an agreement with HCHC to limit marketing of competing healthcare services in Hillsdale County. This agreement eliminated a significant form of competition to attract patients and substantially diminished competition in Hillsdale County, depriving consumers, physicians, and employers of important information and services. The hospitals' agreement to allocate territories for marketing is *per se* illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

With the Complaint, the United States and the State of Michigan filed a Stipulation and proposed Final Judgment ("Original Judgment") with respect to HCHC, Branch, and ProMedica. That Original Judgment settled this suit as to those three defendants. Following a Tunney Act review process, the Court granted Plaintiffs' Motion for Entry of the Original Judgment (Dkt. 36) and dismissed HCHC, Branch, and ProMedica from the case (Dkt. 37). The case against Allegiance continued.

Allegiance has now agreed to a proposed Final Judgment, which contains terms that are similar to those in the Original Judgment, as well as additional terms. The United States filed this proposed Final Judgment with respect to

Allegiance ("proposed Final Judgment") on February 9, 2018 (Dkt. 122-1). The proposed Final Judgment is described in more detail in Section III below.

The proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF THE EVENTS GIVING RISE TO THE ALLEGED VIOLATIONS

A. Background on Allegiance and Its Marketing Activities

Allegiance is a nonprofit general medical and surgical hospital in Jackson County, which is adjacent to HCHC's location in Hillsdale County in South Central Michigan. Allegiance is the only hospital in its county. Allegiance directly competes with HCHC to provide many of the same hospital and physician services to patients.

An important tool that hospitals use to compete for patients is marketing aimed at informing consumers, physicians, and employers about a hospital's quality and scope of services. Allegiance and HCHC's marketing includes advertisements through mailings and media, such as local newspapers, radio, television, and billboards, as well as the provision of free medical services, such as health screenings, physician seminars, and health fairs. Allegiance and HCHC also market to physicians and employers through educational and relationship-building

meetings that provide physicians and employers with information about the hospitals' quality and range of services.

B. Allegiance's Unlawful Agreement with HCHC to Limit Marketing

Allegiance agreed with HCHC to suppress its marketing in Hillsdale County, and since at least 2009 to the time of filing of the Complaint in June 2015, Allegiance and HCHC's agreement limited Allegiance's marketing for competing services in Hillsdale County. Allegiance believed that HCHC might refer more complicated cases to Allegiance because of Allegiance's agreement to pull its competitive punches in Hillsdale County. Allegiance executives acknowledged the agreement in numerous documents. The hospitals' senior executives, including their CEOs, created, monitored, and enforced the agreement, which lasted for many years. The harmful effects of the agreement continue to the present day.

In compliance with this agreement, Allegiance routinely excluded Hillsdale County from many of its marketing campaigns. As Allegiance explained in a 2013 oncology marketing plan: "[A]n agreement exists with the CEO of Hillsdale Community Health Center . . . to not conduct marketing activity in Hillsdale County." Allegiance employees repeatedly referred in internal documents to an "agreement" or a "gentleman's agreement" with HCHC, with a high-ranking executive describing Allegiance's "relationship with HCHC" as "one of seeking 'approval' to provide services in their market." Allegiance executives on occasion

apologized in writing to HCHC for violating the agreement and assured HCHC executives that Allegiance would honor the previously agreed-upon marketing restrictions going forward: "It isn't our style to purposely not honor our agreement." Allegiance even reduced the number of free health benefits, such as physician seminars and health screenings, offered to residents of Hillsdale County because of the agreement. This unlawful agreement between Allegiance and HCHC has deprived Hillsdale County consumers, physicians, and employers of valuable free health screenings and education and information regarding their healthcare provider choices.

C. *Allegiance's Marketing Agreement Is Per Se Illegal*

The agreement between Allegiance and HCHC disrupted the competitive process and harmed consumers. The agreement deprived consumers of information they otherwise would have had when making important healthcare decisions. The agreement also deprived Hillsdale County consumers of free medical services such as health screenings and physician seminars that they would have received but for the unlawful agreement. Moreover, Allegiance's agreement with HCHC denied employers the opportunity to receive information and to develop relationships that could have allowed them to improve the quality of their employees' medical care. And the agreement diminished Allegiance's and HCHC's incentives to compete on quality or to improve patient experience, all to

the detriment of South Central Michigan consumers.

The agreement to restrict marketing constituted a naked restraint of trade that is *per se* unlawful under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772. *See United States v. Topco Assocs., Inc.*, 405 U.S. 596, 607-08 (1972) (holding that naked market allocation agreements among horizontal competitors are plainly anticompetitive and illegal per se); *United States v. Cooperative Theatres of Ohio*, Inc., 845 F.2d 1367, 1371, 1373 (6th Cir. 1988) (holding that the defendants' agreement to not "*actively* solicit[] each other's customers" was "undeniably a type of customer allocation scheme which courts have often condemned in the past as a *per se* violation of the Sherman Act"); *Blackburn v. Sweeney*, 53 F.3d 825, 828 (7th Cir. 1995) (holding that the "[a]greement to limit advertising to different geographical regions was intended to be, and sufficiently approximates[,] an agreement to allocate markets so that the *per se* rule of illegality applies"). Allegiance's agreement with HCHC was not reasonably necessary to further any procompetitive purpose.

The antitrust laws would not prohibit a hospital from making its own marketing decisions and conducting marketing activities as it sees fit, so long as it does so unilaterally. By agreeing with a competitor to restrict marketing, however, Allegiance engaged in concerted action. By doing so, Allegiance deprived

consumers of the benefits of competition and ran afoul of the antitrust laws.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and will restore the competition restrained by the anticompetitive agreement between Allegiance and HCHC. Section X of the proposed Final Judgment provides that these provisions will expire five years after its entry.

A. Prohibited Conduct

Under Section IV of the proposed Final Judgment, Allegiance cannot agree with any healthcare provider to prohibit or limit marketing. Allegiance also cannot allocate any services, customers, or geographic markets or territories, subject to narrow exceptions relating to the provision of certain services jointly with another healthcare provider. Allegiance is prohibited from communicating with any healthcare provider about Allegiance's marketing in its or the provider's county, subject to narrow exceptions relating to legitimate procompetitive activities.

Additionally, Allegiance is prohibited from excluding Hillsdale County from its marketing or business development activities. This prohibition restores competition that was eliminated during the course of the agreement, which Allegiance implemented in part by carving out Hillsdale County from many of its

marketing activities. This prohibition ensures that Hillsdale County consumers will benefit from competition.

B. Compliance and Inspection

The proposed Final Judgment sets forth various provisions to ensure Allegiance's compliance with the proposed Final Judgment. Section V of the proposed Final Judgment requires Allegiance to hire and appoint an Antitrust Compliance Officer within thirty days of the Final Judgment's entry. The Antitrust Compliance Officer may be a current employee of Henry Ford Health System, and Allegiance must obtain Plaintiffs' approval for the person appointed to this position.

The Antitrust Compliance Officer must furnish copies of this Competitive Impact Statement, the Final Judgment, and a notice explaining the Final Judgment's obligations to Allegiance's officers and directors (including its Board of Directors), direct reports to Allegiance's Chief Executive Officer, marketing managers at the level of director and above, and all other employees engaged in activities relating to Allegiance's marketing or business development activities. The Antitrust Compliance Officer must also obtain from each recipient a certification that he or she has read and agrees to abide by the terms of the Final Judgment. The Antitrust Compliance Officer must maintain a record of all certifications received. The Antitrust Compliance Officer shall annually brief each

person receiving a copy of the Final Judgment and this Competitive Impact Statement on the meaning and requirements of the Final Judgment and the antitrust laws. In addition, the Antitrust Compliance Officer shall ensure that each recipient of the Final Judgment and this Competitive Impact Statement receives at least four hours of training annually on the meaning and requirements of the Final Judgment and the antitrust laws.

Section V of the proposed Final Judgment requires the Antitrust Compliance Officer to communicate annually to Allegiance's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of the Final Judgment or the antitrust laws. In addition, the Antitrust Compliance Officer shall maintain a log of communications relating to marketing between Allegiance staff and any officers or directors of other healthcare system providers. Annually, for the term of the Final Judgment, the Antitrust Compliance Officer must provide to Plaintiffs written confirmation of Allegiance's compliance with Section V, including providing copies of the training materials used for Allegiance's antitrust training program.

Additionally, within thirty days of learning of any violation or potential violation of the terms and conditions of the Final Judgment, Allegiance must file with the United States a statement describing the violation and the actions Allegiance took to terminate it.

To ensure Allegiance's compliance with the Final Judgment, Section VI of the proposed Final Judgment requires Allegiance to grant the United States and the State of Michigan access, upon reasonable notice, to Allegiance's records and documents relating to matters contained in the Final Judgment. Upon request, Allegiance also must make its employees available for interviews or depositions and answer interrogatories and prepare written reports relating to matters contained in the Final Judgment.

After entering into the settlement and specifically agreeing not to carve out Hillsdale County from its marketing campaigns, Allegiance issued a press release that claimed that it was allowed to "continue [its] marketing strategies." John Commins, *Henry Ford Allegiance "Reluctantly" Settles DOJ Antitrust Suit*, HEALTHLEADERS MEDIA, Feb. 12, 2018, http://www.healthleadersmedia.com/marketing/henry-ford-allegiance-reluctantly-settles-doj-antitrust-suit#. This statement demonstrates that Allegiance's need for an effective antitrust compliance program is particularly acute and underscores the importance of provisions in the proposed Final Judgment to allow Plaintiffs to closely monitor Allegiance's actions to ensure compliance.

C. Investigation Fees and Costs

The proposed Final Judgment requires Allegiance to reimburse Plaintiffs for a portion of their litigation costs. Allegiance is required to pay the United States

the sum of $5,000.00 and the State of Michigan the sum of $35,000.00.

D. Enforcement and Expiration of the Final Judgment

The proposed Final Judgment contains provisions designed to promote compliance and make the enforcement of consent decrees as effective as possible. Paragraph IX(A) provides that Plaintiffs retain and reserve all rights to enforce the provisions of the proposed Final Judgment, including their rights to seek an order of contempt from the Court. Under the terms of this paragraph, Allegiance has agreed that in any civil contempt action, any motion to show cause, or any similar action brought by Plaintiffs regarding an alleged violation of the Final Judgment, Plaintiffs may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Allegiance has waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph IX(B) of the proposed Final Judgment further provides that should the Court find in an enforcement proceeding that Allegiance has violated the Final Judgment, Plaintiffs may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment,

Paragraph IX(B) requires Allegiance to reimburse Plaintiffs for attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort.

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 Allegiance.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, which conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty 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 Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the *Federal Register*.

Written comments should be submitted to:

Peter J. Mucchetti
Chief, Healthcare and Consumer Products Section
Antitrust Division
United States Department of Justice
450 Fifth Street, N.W., Suite 4100
Washington, D.C. 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the 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 full trial on the merits against Allegiance. The United States is satisfied, however, that the relief in the proposed Final Judgment will prevent the recurrence of the violations alleged in the Complaint and ensure that consumers, physicians, and employers benefit from competition. Thus, the proposed Final

Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-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, in accordance with the statute as amended in 2004, is required to 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
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> (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).[1] In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the Defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States v. U.S. Airways Group, Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (noting the court has broad discretion of the adequacy of the relief at issue); *United States v. SBC Commc'ns, Inc.*, 489 F. Supp. 2d 1 (D.D.C. 2007) (describing the public-interest standard under the Tunney Act); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the final judgment are clear and manageable").

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

[1] The 2004 amendments substituted "shall" for "may" in directing relevant factors for courts to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. § 16(e) (2004), *with* 15 U.S.C. § 16(e)(1) (2006); *see also SBC Commc'ns*, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft*, 56 F.3d at 1458-62. 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) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460-62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. One court explained:

> [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 [e]nsuring 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).[2] In determining whether a proposed settlement is in the public interest, a district court "must accord

[2] *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'").

deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns*, 489 F. Supp. 2d at 17; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that a court should not reject the proposed remedies because it believes others are preferable); *Microsoft*, 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. "[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); *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that room must be made for the government to grant concessions in the negotiation process for settlements) (citing *Microsoft*, 56 F.3d at 1461); *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). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns*, 489 F. Supp. 2d at 17.

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; *see also U.S. Airways*, 38 F. Supp. 3d at 76 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). 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. *Microsoft*, 56 F.3d at 1459-60. As the United States District Court for the District of Columbia confirmed in *SBC Communications*, courts "cannot look beyond the complaint in making the public interest determination unless the complaint is

drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns*, 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of using consent decrees in antitrust enforcement, adding the unambiguous instruction that "[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); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (noting that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). The language captured Congress's intent when it enacted the Tunney Act in 1974. Senator Tunney explained: "The court is nowhere compelled to go to trial 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 Sen. Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns*, 489 F. Supp. 2d at 11.[3] A court can

[3] *See United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States v. Mid-Am. Dairymen, Inc.*, No. 73-CV-681-W-1, 1977-1 Trade Cas. (CCH) ¶ 61,508, at 71,980, *22 (W.D. Mo. 1977) ("Absent a

make its public-interest determination based on the competitive impact statement and response to public comments alone. *U.S. Airways*, 38 F. Supp. 3d at 76.

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: February 27, 2018 Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

/s/ Katrina Rouse
Katrina Rouse (D.C. Bar No. 1013035)
Garrett Liskey
Andrew Robinson
Jill Maguire
Healthcare & Consumer Products Section
Antitrust Division
U.S. Department of Justice
450 Fifth St., NW
Washington, DC 20530
(415) 934-5346
Katrina.Rouse@usdoj.gov

Peter Caplan (P-30643)
Assistant United States Attorney
U.S. Attorney's Office
Eastern District of Michigan
211 W. Fort Street
Suite 2001
Detroit, Michigan 48226
(313) 226-9784
peter.caplan@usdoj.gov

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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."); S. Rep. No. 93-298, at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

Certificate of Service

I hereby certify that on February 27, 2018, I electronically filed the foregoing paper with the Clerk of Court using the ECF system, which will send notification of the filing to the counsel of record for all parties for civil action 5:15-cv-12311-JEL-DRG, and I hereby certify that there are no individuals entitled to notice who are non-ECF participants.

/s/ Garrett Liskey
Garrett Liskey (D.C. Bar No. 1000937)
Antitrust Division, Healthcare and
Consumer Products Section
U.S. Department of Justice
450 Fifth St., NW
Washington, DC 20530
(202) 598-2849
Garrett.Liskey@usdoj.gov