

**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
Judge Judith E. Levy
Magistrate Judge David R. Grand

**PLAINTIFF UNITED STATES' UNOPPOSED MOTION AND
MEMORANDUM FOR ENTRY OF THE PROPOSED FINAL JUDGMENT**

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), Plaintiff United States of America moves for entry of the proposed Final Judgment with respect to Defendant W.A. Foote Memorial Hospital d/b/a Allegiance Health (“Allegiance”), a copy of which is attached as [Exhibit A](#). The Court may enter the proposed Final Judgment at this time without further proceedings if the Court determines that entry is in the public interest under 15 U.S.C. § 16(e). The Competitive Impact Statement filed in this matter on February 27, 2018 (Docket No. 125) explains why entry of the proposed Final Judgment would be in the public interest. The State of Michigan and Allegiance

do not oppose the entry of the proposed Final Judgment.

The United States is filing simultaneously with this motion a Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (attached as [Exhibit B](#)) confirming that the settling parties have complied with all applicable provisions of the APPA. It is therefore appropriate for the Court to now make the public interest determination required by 15 U.S.C. § 16(e).

I. Background

On June 25, 2015, the United States and the State of Michigan filed a civil antitrust Complaint in this matter 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 (Docket No. 36) and dismissed HCHC, Branch, and ProMedica from the case (Docket No. 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 (Docket No. 122-1). Among other things, the proposed Final Judgment prevents Allegiance from engaging in improper communications with competing providers regarding their respective marketing activities and entering into any improper agreement to allocate customers or to limit marketing. It also explicitly prevents Allegiance from continuing to carve out Hillsdale County from its marketing and business development activities. And the proposed settlement requires Allegiance to report violations and submit to compliance inspections at the United States’ request.

Entry of the proposed Final Judgment would terminate this action with respect to Allegiance, the sole remaining Defendant, except that the Court would

retain jurisdiction to construe, modify, or enforce provisions of the Final Judgment and to punish violations thereof.

II. Compliance with the APPA

The APPA requires a 60-day period for submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the Competitive Impact Statement with the Court on February 27, 2018 (Docket No. 125), and published the Complaint, proposed Final Judgment, and Competitive Impact Statement in the *Federal Register* on March 7, 2018. *See* 83 Fed. Reg. 9750-60 (2018). The United States also had summaries of the terms of the proposed Final Judgment and Competitive Impact Statement, together with directions for submission of written comments relating to the proposed Final Judgment, published in *The Washington Post* for seven days, beginning on March 5, 2018, and ending on March 11, 2018, and published in the *Detroit Free Press* for seven days, beginning on March 8, 2018, and ending on March 14, 2018. The 60-day public comment period ended no later than May 14, 2018. The United States did not receive any comments from the public.

The Certificate of Compliance filed simultaneously as Exhibit B to this Motion and Memorandum states that all requirements of the APPA have been satisfied. It is therefore appropriate for the Court to make the public interest

determination required by 15 U.S.C. § 16(e) and to enter the proposed Final Judgment.

III. The Proposed Final Judgment Satisfies the Public Interest Standard under the APPA

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment “is in the public interest.” 15 U.S.C. § 16(e)(1). In making that determination, the Court may 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 the Competitive Impact Statement, the United States set forth the public interest standard under the APPA and now incorporates those statements by reference. The public has had the opportunity to comment on the proposed Final Judgment as required by the APPA. No member of the public has commented. As explained in the Competitive Impact Statement, entry of the proposed Final

Judgment is in the public interest. Accordingly, the Court should find that entry of the proposed Final Judgment is appropriate under 15 U.S.C. § 16(e).

IV. Conclusion

For the reasons set forth in this Unopposed Motion and Memorandum and in the Competitive Impact Statement, the Court should find that the proposed Final Judgment is in the public interest. The United States respectfully requests that the proposed Final Judgment be entered at this time.

Dated: May 21, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 21, 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.

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