

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA and
STATE OF MICHIGAN,

Plaintiffs,

v.

HILLSDALE COMMUNITY HEALTH
CENTER,
W.A. FOOTE MEMORIAL HOSPITAL,
D/B/A ALLEGIANCE HEALTH,
COMMUNITY HEALTH CENTER OF
BRANCH COUNTY, and
PROMEDICA HEALTH SYSTEM, INC.,

Defendants.

Case No.: 2:15-cv-12311
Hon. Judith E. Levy

STIPULATION AND ORDER

Plaintiffs United States of America and State of Michigan (“Plaintiffs”) and Defendants Hillsdale Community Health Center, Community Health Center of Branch County, and ProMedica Health System, Inc. (collectively, “Settling Defendants”), hereby stipulate and agree, subject to approval and entry by the Court, that:

1. The Court has jurisdiction over the subject matter of this action and over each of the undersigned parties hereto; Settling Defendants waive service of

summons of the Complaint; and venue of this action is proper in the United States District Court for the Eastern District of Michigan.

2. The undersigned parties stipulate that a Final Judgment in the form attached hereto as [Exhibit A](#) may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on each Settling Defendant and by filing that notice with the Court. The State of Michigan may withdraw its consent at any time before the entry of the proposed Final Judgment. Withdrawal of consent by either Plaintiff does not prohibit the non-withdrawing Plaintiff from proceeding on its own as outlined in this Stipulation.

3. Settling Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notices required by the APPA, which will be drafted by the United States in its sole discretion. The publication will be arranged no later than three business days after the Settling Defendants' receipt from the United States of the text of the notice and the identity of the newspapers within which the publication will be made. Settling Defendants will promptly send to the United States (1) confirmation that publication of the newspaper notices has been

arranged, and (2) the certification of the publication prepared by the newspapers within which the notice was published.

4. Settling Defendants must abide by and comply with the provisions of the proposed Final Judgment, pending the proposed Final Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and will, from the date of the signing of this Stipulation by the undersigned parties, comply with all the terms and provisions of the proposed Final Judgment. Plaintiffs shall have the full rights and enforcement powers in the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

5. This Stipulation will apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the undersigned parties and submitted to the Court.

6. In the event (1) the United States or the State of Michigan has withdrawn its consent, as provided in Paragraph 2 above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the undersigned parties are released from all further obligations under this Stipulation, and the making of this

Stipulation will be without prejudice to any party in this or any other proceeding.

7. Settling Defendants represent that the actions they are required to perform pursuant to the proposed Final Judgment can and will be performed, and that Settling Defendants will later raise no claim of mistake, hardship or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

Dated: June 25, 2015

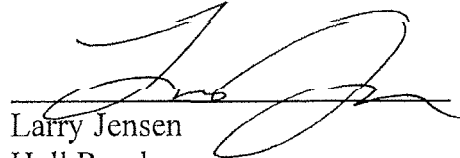
Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA



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FOR DEFENDANT HILLSDALE
COMMUNITY HEALTH CENTER



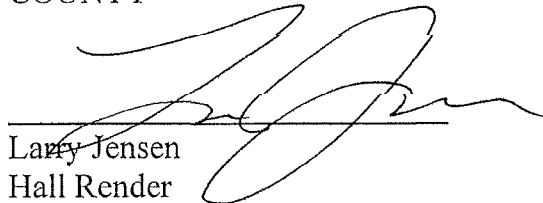
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FOR PLAINTIFF
STATE OF MICHIGAN

/s/ with the consent of Mark Gabrielse

Mark Gabrielse
Assistant Attorney General
Michigan Department of Attorney
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FOR DEFENDANT COMMUNITY
HEALTH CENTER OF BRANCH
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FOR DEFENDANT PROMEDICA
HEALTH SYSTEM, INC.

A handwritten signature in blue ink, appearing to read "Stephen Y. Wu", is written over a horizontal line.

Stephen Y. Wu
McDermott Will & Emery LLP
227 West Monroe Street, Suite 4400
Chicago, IL 60606-5096
Phone: (312) 372-2000
Illinois Bar #6269298
Email: swu@mwe.com

ORDER

IT IS SO ORDERED by this Court, this ____ day of

_____.

United States District Judge

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2015, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system and sent it via email to the following counsel at the email addresses below.

Counsel for Defendants Hillsdale Community Health Center and
Community Health Center of Branch County:

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Counsel for Defendant W.A. Foote Memorial Hospital, d/b/a Allegiance
Health:

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Counsel for Defendant ProMedica Health System, Inc.:

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/s/ Katrina Rouse
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EXHIBIT A

**UNITED STATES DISTRICT COURT
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HILLSDALE COMMUNITY HEALTH
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Defendants.

Case No.: 2:15-cv-12311
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[PROPOSED] FINAL JUDGMENT

WHEREAS, Plaintiffs, the United States of America and the State of Michigan, filed their joint Complaint on June 25, 2015, alleging that Defendants violated Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772;

AND WHEREAS, Plaintiffs and Defendants Hillsdale Community Health Center, Community Health Center of Branch County, and ProMedica Health System, Inc. (collectively, "Settling 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 WHEREAS, Plaintiffs require the Settling Defendants to agree to undertake certain actions and refrain from certain conduct for the purpose of remedying the anticompetitive effects alleged in the Complaint;

NOW THEREFORE, before any testimony is taken, without this Final Judgment constituting any evidence against or admission by Settling Defendants regarding any issue of fact or law, and upon consent of the parties to this action, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against the Settling Defendants under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Section 2 of the Michigan Antitrust Reform Act, MCL 445.772.

II. DEFINITIONS

As used in this Final Judgment:

(A) “Allegiance” means Defendant W. A. Foote Memorial Hospital doing business as Allegiance Health, a corporation organized and existing under the laws of the State of Michigan with its headquarters in Jackson, Michigan, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates,

partnerships, and joint ventures, and (iii) their directors, officers, managers, agents, and employees.

(B) “Agreement” means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

(C) “Branch” means Defendant Community Health Center of Branch County, a municipal health facility corporation formed under Public Act 230 of the Public Acts of 1987 (MCL 331.1101, *et. seq.*) with its headquarters in Coldwater, Michigan, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents, and employees.

(D) “Communicate” means to discuss, disclose, transfer, disseminate, or exchange information or opinion, formally or informally, directly or indirectly, in any manner.

(E) “Hillsdale” means Defendant Hillsdale Community Health Center, a corporation organized and existing under the laws of the State of Michigan with its headquarters in Hillsdale, Michigan, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) their directors, officers, managers, agents, and employees.

(F) “Joint Provision of Services” means any past, present, or future coordinated delivery of any healthcare services by two or more healthcare

providers, including a clinical affiliation, joint venture, management agreement, accountable care organization, clinically integrated network, group purchasing organization, management services organization, or physician hospital organization.

(G) “Marketing” means any past, present, or future activities that are involved in making persons aware of the services or products of the hospital or of physicians employed or with privileges at the hospital, including advertising, communications, public relations, provider network development, outreach to employers or physicians, and promotions, such as free health screenings and education.

(H) “Marketing Manager” means any company officer or employee at the level of director, or above, with responsibility for or oversight of Marketing.

(I) “Person” means any natural person, corporation, firm, company, sole proprietorship, partnership, joint venture, association, institute, governmental unit, or other legal entity.

(J) “ProMedica” means Defendant ProMedica Health System, Inc., a corporation organized and existing under the laws of the State of Ohio with its headquarters in Toledo, Ohio, its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, including Emma L. Bixby Medical Center, Inc. (d/b/a ProMedica Bixby Hospital), a

Michigan nonprofit corporation located in Adrian, Michigan, and Herrick Hospital, Inc. (d/b/a ProMedica Herrick Hospital), a Michigan nonprofit corporation located in Tecumseh, Michigan, but excluding Paramount Health Care, and (iii) their directors, officers, managers, agents, and employees.

(K) “Provider” means any physician or physician group and any inpatient or outpatient medical facility including hospitals, ambulatory surgical centers, urgent care facilities, and nursing facilities.

(L) “Relevant Area” means Branch, Hillsdale, Jackson, and Lenawee Counties in the State of Michigan.

III. APPLICABILITY

This Final Judgment applies to the Settling Defendants, 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) Each Settling Defendant shall not attempt to enter into, enter into, maintain, or enforce any Agreement with any other Provider that:

- (1) prohibits or limits Marketing; or
- (2) allocates any geographic market or territory between or among the Settling Defendant and any other Provider.

(B) Each Settling Defendant shall not Communicate with any other

Defendant about any Defendant's Marketing in its or the other Defendant's county, except each Settling Defendant may:

- (1) communicate with any other Defendant about joint Marketing if the communication is related to the Joint Provision of Services; or
- (2) communicate with any other Defendant about Marketing if the communication is part of customary due diligence relating to a merger, acquisition, joint venture, investment, or divestiture.

V. REQUIRED CONDUCT

(A) Within thirty days of entry of this Final Judgment, each Settling Defendant shall appoint an Antitrust Compliance Officer and identify to Plaintiffs his or her name, business address, and telephone number.

(B) Each Antitrust Compliance Officer shall:

- (1) furnish a copy of this Final Judgment, the Competitive Impact Statement, and a cover letter that is identical in content to Exhibit 1 within sixty days of entry of the Final Judgment to each Settling Defendant's officers, directors, and Marketing Managers, and to any person who succeeds to any such position, within thirty days of that succession;

- (2) annually brief each person designated in Section V(B)(1) on the meaning and requirements of this Final Judgment and the antitrust laws;
- (3) obtain from each person designated in Section V(B)(1), within sixty days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not already been reported to the Settling Defendant; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against each Settling Defendant and/or any person who violates this Final Judgment;
- (4) maintain a record of certifications received pursuant to this Section; and
- (5) annually communicate to the Settling Defendant's employees that they may disclose to the Antitrust Compliance Officer, without reprisal, information concerning any potential violation of this Final Judgment or the antitrust laws.

(C) Each Settling Defendant shall:

(1) upon learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain all documents related to any violation or potential violation of this Final Judgment;

(2) upon learning of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, file with the United States and the State of Michigan a statement describing any violation or potential violation within thirty days of its becoming known. Descriptions of violations or potential violations of this Final Judgment shall include, to the extent practicable, a description of any communications constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication; and

(3) certify to the United States and the State of Michigan annually on the anniversary date of the entry of this Final Judgment that the Settling Defendant has complied with the provisions of this Final Judgment.

VI. SETTLING DEFENDANTS' COOPERATION

Each Settling Defendant shall cooperate fully and truthfully with the United States and the State of Michigan in any investigation or litigation alleging that Defendants unlawfully agreed to restrict Marketing in the Relevant Area in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, or Section 2 of the Michigan Antitrust Reform Act, MCL 445.772. Each Settling Defendant shall use its best efforts to ensure that all officers, directors, employees, and agents also fully and promptly cooperate with the United States and the State of Michigan. The full, truthful, and continuing cooperation of each Settling Defendant will include, but not be limited to:

(A) producing all documents and other materials, wherever located, not protected under the attorney-client privilege or the work-product doctrine, in the possession, custody, or control of that Settling Defendant, that are relevant to the unlawful agreements among Defendants to restrict Marketing in the Relevant Area in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, or Section 2 of the Michigan Antitrust Reform Act, MCL 445.772, alleged in the Complaint, upon the request of the United States or the State of Michigan;

(B) making available for interview any officers, directors, employees, and agents if so requested by the United States or the State of Michigan; and

(C) testifying at trial and other judicial proceedings fully, truthfully, and under oath, subject to the penalties of perjury (18 U.S.C. § 1621), making a false statement or declaration in court proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401-402), and obstruction of justice (18 U.S.C. § 1503, *et seq.*), or the equivalent Michigan provisions, when called upon to do so by the United States or the State of Michigan;

(D) provided however, that the obligations of each Settling Defendant to cooperate fully with the United States and the State of Michigan as described in this Section shall cease upon the sooner of (i) when all Defendants settle all claims in this matter and all settlements have been entered by this Court, or (ii) at the conclusion of all investigations and litigation alleging the non-Settling Defendant unlawfully agreed to restrict Marketing in the Relevant Area in violation of Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1, or Section 2 of the Michigan Antitrust Reform Act, MCL 445.772, including exhaustion of all appeals or expiration of time for all appeals of any Court ruling in this matter.

VII. COMPLIANCE INSPECTION

(A) For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time authorized representatives of the United States Department of Justice or the Office

of the Michigan Attorney General, including consultants and other retained persons, shall, upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or of the Office of the Michigan Attorney General, and on reasonable notice to Settling Defendants, be permitted:

(1) access during Settling Defendants' office hours to inspect and copy, or at the option of the United States or the State of Michigan, to require Settling Defendants to provide hard copy or electronic copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of Settling Defendants, relating to any matters contained in this Final Judgment; and

(2) to interview, either informally or on the record, Settling Defendants' officers, directors, employees, or agents, who may have individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Settling Defendants.

(B) Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division or of the Office of the Michigan Attorney General, Settling Defendants shall, subject to any legally recognized privilege, submit written reports or response to written interrogatories,

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 or the State of Michigan to any person other than an authorized representative of the executive branch of the United States or the State of Michigan, except in the course of legal proceedings to which the United States or the State of Michigan 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) If at the time information or documents are furnished by Settling Defendants to the United States or the State of Michigan, Settling 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)(1)(G) of the Federal Rules of Civil Procedure, and Settling Defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States and the State of Michigan shall give Settling Defendants ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. INVESTIGATION FEES AND COSTS

Each Settling Defendant shall pay to the State of Michigan the sum of \$5,000.00 to partially cover the attorney fees and costs of investigation.

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 its provisions.

X. EXPIRATION OF FINAL JUDGMENT

Unless this Court grants an extension, this Final Judgment shall expire five years from the date of its entry.

XI. NOTICE

For purposes of this Final Judgment, any notice or other communication required to be filed with or provided to the United States or the State of Michigan shall be sent to the persons at the addresses set forth below (or such other address as the United States or the State of Michigan may specify in writing to any Settling Defendant):

Chief
Litigation I Section
U.S. Department of Justice
Antitrust Division

450 Fifth Street, Suite 4100
Washington, DC 20530

Division Chief
Corporate Oversight Division
Michigan Department of Attorney General
525 West Ottawa Street
P.O. Box 30755
Lansing, MI 48909

XII. PUBLIC INTEREST DETERMINATION

The parties, as required, have complied with the procedures 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' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the 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

Exhibit 1

[Letterhead of Settling Defendant]

[Name and Address of Antitrust Compliance Officer]

Dear [XX]:

I am providing you this notice to make sure you are aware of a court order recently entered by a federal judge in _____, Michigan. This court order applies to our institution and all of its employees, including you, so it is important that you understand the obligations it imposes on us. [CEO Name] has asked me to let each of you know that s/he expects you to take these obligations seriously and abide by them.

In a nutshell, the order prohibits us from agreeing with other healthcare providers, including hospitals and physicians, to limit marketing or to divide any geographic market or territory between healthcare providers. This means you cannot give any assurance to another healthcare provider that [Settling Defendant] will refrain from marketing our services, and you cannot ask for any assurance from them that they will refrain from marketing. The court order also prohibits communicating with [list other three defendants], or their employees about our marketing plans or about their marketing plans. There are limited exceptions to this restriction on communications, such as discussing joint projects, but you should check with me before relying on those exceptions.

A copy of the court order is attached. Please read it carefully and familiarize yourself with its terms. The order, rather than the above description, is controlling. If you have any questions about the order or how it affects your activities, please contact me. Thank you for your cooperation.

Sincerely,

[Settling Defendant's Antitrust Compliance Officer]