

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Robert Pitofsky, Chairman
Mary L. Azcuenaga
Janet D. Steiger
Roscoe B. Starek, III
Christine A. Varney

In the Matter of)	Docket No. C-3743
TENET HEALTHCARE CORPORATION,)	DECISION AND ORDER
a corporation.)	
)	

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of OrNda Healthcorp by Tenet Healthcare Corporation ("Tenet" or "respondent"), and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition and the Los Angeles Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to § 2.34 of its Rules, now in further conformity with the procedure prescribed in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Tenet is a corporation organized, existing, and doing business under and by virtue of the laws of Nevada, with its principal place of business at 3820 State Street, Santa Barbara, California 93105.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED THAT, as used in this order, the following definitions shall apply:

A. "Tenet" or "respondent" means Tenet Healthcare Corporation; its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by Tenet Healthcare Corporation; and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

B. "OrNda" means OrNda Healthcorp; its directors, officers, employees, agents and representatives, predecessors, successors, and assigns; its subsidiaries, divisions, groups and affiliates controlled by OrNda Healthcorp; and the respective directors, officers, employees, agents, and representatives, successors, and assigns of each.

C. "Commission" means the Federal Trade Commission.

D. The "Acquisition" means the transaction contemplated by the October 16, 1996 Agreement and Plan of Merger between Tenet and OrNda, pursuant to which OrNda will become a wholly-owned subsidiary of Tenet.

E. "Acute care hospital" means a health care facility, licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility, and an organized professional staff, that provides 24-hour inpatient care, that may also provide outpatient services, and having as a primary function the provision of inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities.

F. "Affiliate" means any entity whose management and policies are controlled in any way, directly or indirectly, by the person with which it is affiliated.

G. "Person" means any natural person, partnership, corporation, company, association, trust, joint venture, or other business or legal entity, including any governmental agency.

H. "Relevant area" means the county of San Luis Obispo in California.

I. The "Schedule A assets" mean the assets identified in the attached Schedule A.

J. The "Schedule B assets" mean the assets identified in the attached Schedule B.

K. "Monarch Health Systems" or "Monarch" means Monarch Medical Alliance, Inc., doing business as Monarch Health Systems (a corporation with its headquarters in Santa Barbara, California), its subsidiaries, and their successors and assigns.

L. "Assets and Businesses" include, but are not limited to, all assets, properties, businesses, rights, privileges, contractual interests, licenses, and goodwill of whatever nature, tangible and intangible, including, without limitation, the following:

1. all real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), together with all buildings, improvements, and fixtures located thereon, all construction in progress thereat, all appurtenances thereto, and all licenses and permits related thereto (collectively, the "Real Property");
2. all contracts and agreements with physicians, other health care providers, unions, third party payers, health maintenance organizations and other health plans, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees (collectively, the "Contracts");
3. all machinery, equipment, fixtures, vehicles, furniture, inventories, and supplies (other than such inventories and supplies as are used in the ordinary

course of business during the time that Tenet owns the assets) (collectively, the "Personal Property");

4. all research materials, technical information, management information systems, software, software licenses, inventions, trade secrets, technology, know-how, specifications, designs, drawings, processes, and quality control data (collectively, the "Intangible Personal Property");
5. all books, records, and files, excluding, however, the corporate minute books and tax records of Tenet, OrNda, and their affiliates; and
6. all prepaid expenses.

M. To "operate" an acute care hospital means to own, lease, manage, or otherwise control or direct the operations of an acute care hospital, directly or indirectly.

N. To "acquire" an acute care hospital means, directly or indirectly, through subsidiaries, partnerships, or otherwise:

1. To acquire the whole or any part of the assets used or previously used within the last two years (and still suitable for use) for operating an acute care hospital from any person presently engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;
2. To acquire the whole or any part of the stock, share capital, equity, or other interest in any person engaged in, or within the two years preceding such acquisition engaged in, operating an acute care hospital;
3. To acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of an acute care hospital; or
4. To enter into any other arrangement to obtain direct or indirect ownership, management, or control of an acute care hospital or any part thereof, including, but not limited to, a lease of or management contract for an acute care hospital.

II.

IT IS FURTHER ORDERED that:

A. Respondent shall divest, absolutely and in good faith, on or before August 1, 1997, the Schedule A assets.

B. Respondent shall also divest, absolutely and in good faith, on or before August 1, 1997, such additional ancillary assets and businesses, and effect such arrangements, as are necessary to assure the marketability, independence, viability, and competitiveness of French Hospital Medical Center.

C. Respondent shall also divest, absolutely and in good faith, on or before August 1, 1997, all of its stock in Monarch Health Systems. The Monarch Health Systems stock may be, but need not be, divested to the same person to whom the Schedule A assets are divested.

D. The purpose of the foregoing divestitures is to ensure the continuation of French Hospital Medical Center as an ongoing, independent, and viable acute care hospital, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's complaint.

E. Respondent shall divest the Schedule A assets, the Monarch Health Systems stock, and any additional assets that must be divested pursuant to Paragraph II.B. above, only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission; provided, however, that respondent may divest the Monarch Health Systems stock, or that stock together with the loan agreement identified in Schedule A, without the prior approval of the Commission, to a person other than respondent in connection with that person's acquisition of all, or substantially all, Monarch Health Systems stock.

F. Respondent shall comply with all terms of the Agreement to Hold Separate concerning the Schedule A assets, the Schedule B assets, and the Monarch Health Systems stock, attached hereto and made a part hereof as Appendix I. Said Hold Separate shall continue in effect until such time as respondent has fulfilled the divestiture requirements of this Paragraph II or until such other time as said Hold Separate provides.

G. Pending the divestitures required by this Paragraph II, respondent shall take such actions as are necessary to maintain the present marketability, viability, and competitiveness of the

Schedule A and Schedule B assets, and to prevent the destruction, removal, wasting, deterioration, or impairment of the Schedule A and Schedule B assets, except for ordinary wear and tear.

H. A condition of approval by the Commission of the divestiture of the Schedule A assets shall be a written agreement by the acquirer(s) of those assets that it will not sell for a period of ten (10) years from the date of divestiture, directly or indirectly, through subsidiaries, partnerships, or otherwise, without prior notification to the Commission in the manner prescribed by Paragraph IV of this Order, any Schedule A asset to any person who operates, or will operate immediately following the sale, any other acute care hospital in the relevant area.

III.

IT IS FURTHER ORDERED that:

A. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, the Schedule A assets, in accordance with this order, on or before August 1, 1997, the Commission may appoint a trustee to effect the divestiture of the Schedule A assets. The trustee may on his or her initiative, or at the direction of the Commission, also divest some or all of the Schedule B assets, to the extent such additional divestitures are necessary to completely fulfill the purpose, identified in Paragraph II.D. above, of the divestiture of the Schedule A assets.

B. If the respondent has not divested, absolutely and in good faith and with the Commission's prior approval, its stock in Monarch Health Systems, in accordance with this order, on or before August 1, 1997, the Commission may appoint a trustee to effect the divestiture of the Monarch Health Systems stock.

C. In the event that the Commission or the Attorney General brings an action for any failure to comply with this order or in any way relating to the Acquisition, pursuant to Section 5(1) of the Federal Trade Commission Act, 15 U.S.C. § 45(1), or any other statute enforced by the Commission, the respondent shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under Paragraph III.A. or Paragraph III.B. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to them for any failure by the respondent to comply with this order.

D. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. or Paragraph III.B. of this order, the respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of the respondent, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If respondent has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to respondent of the identity of any proposed trustee, respondent shall be deemed to have consented to the selection of the proposed trustee.
2. Subject to the prior approval of the Commission (except with respect to any divestiture of Monarch Health Systems stock which Paragraph II.E. permits to be made without Commission approval), the trustee shall serve as an agent of the Commission and shall have the exclusive power and authority to divest (a) the Schedule A assets and, as necessary, some or all of the Schedule B assets, if the trustee is appointed pursuant to Paragraph III.A., and (b) respondent's Monarch Health Systems stock, if the trustee is appointed pursuant to Paragraph III.B.
3. Within ten (10) days after appointment of the trustee, respondent shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures required by this order.
4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.D.3 to accomplish the divestitures, which shall be subject to the prior approval of the Commission (with the exception set forth in Paragraph III.D.2). If, however, at the end of the twelve-month period, the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided, however, that the

Commission may extend this period only two (2) times, for up to twelve (12) months each time.

5. The trustee shall have full and complete access to the personnel, books, records, and facilities related to the assets he or she is to divest, as well as to any other relevant information as the trustee may request. Respondent shall develop such financial or other information as such trustee may reasonably request, and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestitures. Any delays in divestiture caused by respondent shall extend the time for divestiture under this Paragraph III in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.
6. The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to the trustee's fiduciary duty to the Commission and to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to an acquirer as set forth in Paragraph II; provided, however, if the trustee receives *bona fide* offers from more than one acquiring entity for the Schedule A assets (along with, if necessary, some or all of the Schedule B assets), or for the Monarch Health Systems stock, and if the Commission determines to approve more than one such acquiring entity (or, for the Monarch Health Systems stock, more than one entity is either approved to acquire the stock, or does not require Commission approval under Paragraph II.E.), the trustee shall divest to the acquiring entity selected by respondent from among those approved by the Commission.
7. The trustee shall serve, without bond or other security, at the cost and expense of the respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all

monies derived from the sale and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the Schedule A assets (if the trustee is appointed pursuant to Paragraph III.A.) and the Monarch Health Systems stock (if the trustee is appointed pursuant to Paragraph III.B.).

8. Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.
9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A. or Paragraph III.B. of this order.
10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee, issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this order.
11. The trustee shall also divest such additional ancillary assets and businesses and effect such arrangements as are necessary to assure the marketability and the viability and competitiveness of French Hospital Medical Center.
12. The trustee shall have no obligation or authority to operate or maintain the Schedule A assets, or the Schedule B assets, or to take any actions (other than in furtherance of divestiture) relating to the Monarch Health Systems stock.

13. The trustee shall report in writing to the respondent and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this order becomes final, respondent shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity, or other interest in any person, other than respondent, operating an acute care hospital in the relevant area;

B. Acquire any assets of an acute care hospital in the relevant area, or any assets used within the two years preceding such acquisition (and still suitable for use) for operating an acute care hospital in the relevant area;

C. Enter into any agreement or other arrangement to obtain direct or indirect ownership, management, or control of any acute care hospital, or any part thereof, in the relevant area, including but not limited to, a lease of or management contract for any such facility;

D. Acquire or otherwise obtain the right to designate, directly or indirectly, directors or trustees of any acute care hospital in the relevant area;

E. Permit any acute care hospital it operates in the relevant area to be acquired by any person that operates, or will operate immediately following such acquisition, any other acute care hospital in the relevant area; or

F. Acquire any stock, share capital, equity, or other interest in Monarch Health Systems.

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide

the Notification to the Commission at least thirty days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), respondent shall not consummate the transaction until twenty days after submitting such additional information and documentary material. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition.

Provided, however, that prior notification pursuant to this Paragraph IV, or pursuant to Paragraph II.H. of this order, shall not be required for:

- (1) the establishment by respondent of an acute care hospital in the relevant area: (a) that is a replacement for an existing acute care hospital, if that facility is operated by respondent and is not required to be divested pursuant to Paragraph II of this order; or (b) that is not a replacement for any acute care hospital in the relevant area;
- (2) any transaction otherwise subject to this Paragraph IV of this order if the fair market value of (or, in case of an asset acquisition, the consideration to be paid for) the acute care hospital or part thereof to be acquired does not exceed one million dollars (\$1,000,000); or
- (3) any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

V.

IT IS FURTHER ORDERED that, for a period of ten (10) years from the date this order becomes final, respondent shall not permit all, or any substantial part of, any acute care hospital it operates in the relevant area to be acquired by any other person (except pursuant to the divestitures required by Paragraph II, or to divestitures by a trustee pursuant to Paragraph III), unless the acquiring person files with the Commission, prior to the closing of such acquisition, a written agreement to be bound by the provisions of this order, which agreement respondent shall require as a condition precedent to the acquisition.

VI.

IT IS FURTHER ORDERED that within sixty (60) days after the date this order becomes final and every sixty (60) days thereafter until the respondent has fully complied with Paragraph II of this order, respondent shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraph II of this order. Respondent shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraph II of the order, including a description of all substantive contacts or negotiations for the divestitures, and the identity of all parties contacted. Respondent shall include in its compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestitures.

VII.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the order.

VIII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this order, the respondent shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the respondent relating to any matters contained in this order; and

B. Upon five days' notice to respondent and without restraint or interference from it, to interview officers, directors, or employees of respondent, who may have counsel present regarding such matters.

By the Commission.

Donald S. Clark
Secretary

ISSUED: May 20, 1997

SCHEDULE A

The "Schedule A assets" to be divested pursuant to Paragraph II shall include all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture) of French Hospital Medical Center, 1911 Johnson Avenue, San Luis Obispo, California, including without limitation OrNda's ownership, partnership, or leasehold interests in the following properties and businesses in San Luis Obispo County, California:

1. Pacific Medical Plaza, 1941 Johnson Avenue, San Luis Obispo, California;
2. Pulse Health Services, 1911 Johnson Avenue, San Luis Obispo, California;
3. Med Stop Urgent Care Centers, at 283 Madonna Road, San Luis Obispo, California, and 877 Oak Park Boulevard, Pismo Beach, California;
4. Central Coast Surgery Center, 1941 Johnson Avenue, Suite 103, San Luis Obispo, California;
5. San Luis Recovery Partners, 1575 Bishop, San Luis Obispo, California; and
6. La Posada Medical Center, 225 Posada Lane, Templeton, California.

The "Schedule A assets" shall include, in addition, the January 1997 loan agreement between OrNda Investments, Inc. and Monarch Health Systems, including all of OrNda Investments' rights and obligations thereunder, and all promissory notes issued thereunder.

SCHEDULE B

The "Schedule B assets" shall consist of all Assets and Businesses (including all improvements, additions and enhancements made to such assets prior to divestiture) of Valley Community Hospital, 505 East Plaza Drive, Santa Maria, California, including without limitation OrNda's ownership, partnership, or leasehold interests in the following properties and businesses in Santa Barbara County, California:

1. Valley Medical Plaza, 525 East Plaza Drive, Santa Maria, California;
2. Valley Medical Courtyard, 505 and 506 East Plaza Drive, Santa Maria, California; and
3. Knollwood Business Plaza, 5075 South Bradley Road, Santa Maria, California.

Appendix I

AGREEMENT TO HOLD SEPARATE

This Agreement to Hold Separate ("Agreement") is by and between Tenet Healthcare Corporation ("Tenet" or "respondent"), a corporation organized, existing, and doing business under and by virtue of the laws of the State of Nevada, with its principal place of business at 3820 State Street, Santa Barbara, California 93105; and the Federal Trade Commission ("Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. § 41, *et seq.*

PREMISES

WHEREAS, on October 16, 1996, Tenet and OrNda Healthcorp ("OrNda") entered into an Agreement and Plan of Merger pursuant to which OrNda will become a wholly-owned subsidiary of Tenet (the "Acquisition"); and

WHEREAS, Tenet with its principal place of business at 3820 State Street, Santa Barbara, California 93105, owns and operates, among other things, acute care hospitals in San Luis Obispo County, California, and elsewhere; and

WHEREAS, Tenet through the Acquisition will acquire French Hospital Medical Center and related OrNda assets and businesses in San Luis Obispo County, California; Valley Community Hospital and related OrNda assets and businesses in northern Santa Barbara County, California; about one-third of the outstanding stock of Monarch Medical Alliance, Inc., doing business as Monarch Health Systems ("Monarch"), an integrated health care delivery system which is a major customer of French Hospital Medical Center; and a short-term loan agreement for OrNda to lend funds to Monarch; and

WHEREAS, the Commission is now investigating the Acquisition to determine whether it would violate any of the statutes enforced by the Commission; and

WHEREAS, if the Commission accepts the Agreement Containing Consent Order in this matter, which would require the divestiture of French Hospital Medical Center and certain related assets identified in Schedule A of the Consent Order (the "Schedule A assets") and respondent's Monarch stock, and may require the divestiture of certain other assets identified in Schedule B of the Consent Order (the "Schedule B assets") pursuant to Paragraph

II of the Consent Order, the Commission must place the Consent Order on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

WHEREAS, the Commission is concerned that if an understanding is not reached, preserving the *status quo ante* of the Schedule A assets and the Schedule B assets, and preserving the independence of Monarch from Tenet, during the period prior to the final acceptance and issuance of the Consent Order by the Commission (after the "60-day public comment period"), divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

WHEREAS, if the Commission accepts the Consent Order, and Tenet has not divested with the Commission's prior approval French Hospital Medical Center, related assets, and its Monarch stock, in accordance with the Consent Order, on or before August 1, 1997, the Commission may appoint a trustee to divest those assets; and

WHEREAS, the Commission is concerned that if the Acquisition is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of French Hospital Medical Center, related assets, and Monarch stock, and the Commission's right to have French Hospital Medical Center continue as a viable acute care hospital independent of Tenet; and

WHEREAS, the purposes of this Agreement and the Consent Order are to:

(i) preserve French Hospital Medical Center as a viable, competitive, and ongoing acute care hospital, independent of Tenet, pending the divestiture required under the terms of the Consent Order;

(ii) prevent interim harm to competition from the operation of French Hospital Medical Center pending the divestiture required under the terms of the Consent Order; and

(iii) remedy any anticompetitive effects of the Acquisition;

WHEREAS, respondent's entering into this Agreement shall in no way be construed as an admission by respondent that the Acquisition is illegal; and

WHEREAS, respondent understands that no act or transaction contemplated by this Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

NOW, THEREFORE, the parties agree, upon understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Order for public comment it will grant early termination of the Hart-Scott-Rodino waiting period, and unless the Commission determines to reject the Consent Order, it will not seek further relief from respondent with respect to the Acquisition, except that the Commission may exercise any and all rights to enforce this Agreement and the Consent Order to which it is annexed and made a part thereof, and in the event the divestitures required by the Consent Order are not accomplished on or before August 1, 1997, to appoint a trustee to seek divestiture of French Hospital Medical Center, related assets, and Monarch stock pursuant to the Consent Order, to seek civil penalties, to seek a court appointed trustee, and/or to seek other equitable relief, as follows:

1. Respondent agrees to execute the Agreement Containing Consent Order and be bound by the attached Consent Order.
2. Respondent agrees that:
 - a. from the date this Agreement to Hold Separate is accepted until the earliest of the dates listed in subparagraphs 2.a.(i) or 2.a.(ii), it will comply with the provisions of paragraph 3 of this Agreement:
 - (i) three (3) business days after the Commission withdraws its acceptance of the Consent Order pursuant to the provisions of Section 2.34 of the Commission's Rules; or
 - (ii) the day after the divestitures required by Paragraphs II.A. and II.B. of the Consent Order are completed.
 - b. from the date this Agreement to Hold Separate is accepted until the earliest of the dates listed in subparagraphs 2.b.(i) or 2.b.(ii), it will comply with the provisions of paragraph 4 of this Agreement:
 - (i) three (3) business days after the Commission withdraws its acceptance of the Consent Order

pursuant to the provisions of Section 2.34 of the Commission's Rules; or

- (ii) the day after the divestiture required by Paragraph II.C. of the Consent Order is completed, or, if later, the day after all loan agreements between respondent and Monarch expire, are terminated, or are divested in accordance with Paragraph II.A. of the Consent Order.

3. To ensure the complete independence and viability of the Schedule A assets and the Schedule B assets, and to ensure that no competitive information is exchanged between respondent and the managers of the Schedule A assets and the Schedule B assets, respondent shall hold the Schedule A assets and the Schedule B assets, as they are presently constituted, separate and apart on the following terms and conditions:

- a. The Schedule A assets and the Schedule B assets, as they are presently constituted, shall be held separate and apart and shall be managed and operated independently of respondent (meaning here and hereinafter, Tenet excluding the Schedule A assets and the Schedule B assets), except to the extent that respondent must exercise direction and control over such assets to assure compliance with this Agreement or the Consent Order, and except as otherwise provided in this Agreement.
- b. Prior to, or simultaneously with the Acquisition, respondent shall adopt, for the corporations that now own and operate, respectively, French Hospital Medical Center (the "French Company"), and Valley Community Hospital (the "Valley Company"), constituent documents that are not inconsistent with other provisions of this Agreement or the Consent Order. Respondent shall transfer to the French Company all ownership and control of any Schedule A assets it does not already own and control. Respondent shall transfer to the Valley Company all ownership and control of any Schedule B assets it does not already own and control. The French Company and the Valley Company shall hereafter be described collectively as the "Hold Separate Companies."
- c. The boards of directors of each of the Hold Separate Companies ("Hold Separate Companies Boards") shall have the same three members for each of the Hold Separate Companies. Respondent shall elect the members of the

Hold Separate Companies Boards. The Hold Separate Companies Boards shall consist of the following three persons: (i) Michael D. Bakst; (ii) Thomas Sawicki, and (iii) Michael H. Focht Sr., provided they agree, or comparable, knowledgeable persons. The Chairman of the Hold Separate Companies Boards shall be Michael D. Bakst, provided he agrees, or a comparable, knowledgeable person, who shall remain independent of Respondent and competent to assure the continued viability and competitiveness of the Schedule A assets and the Schedule B assets. The Hold Separate Companies Boards shall include no more than one member who is a director, officer, employee, or agent of respondent, who shall be Michael H. Focht Sr., provided he agrees, or a comparable, knowledgeable person ("the respondent's Hold Separate Companies Boards member"). The Hold Separate Companies Boards shall meet monthly during the course of the Hold Separate, and as otherwise necessary. Meetings of the Hold Separate Companies Boards during the term of this Agreement shall be audiographically transcribed and the tapes retained for two (2) years after the termination of this Agreement.

- d. The operations of the Hold Separate Companies shall, to the extent deemed desirable by the Hold Separate Companies Boards, coordinate their operations with each other as if they were a single company.
- e. Respondent shall not exercise direction or control over, or influence directly or indirectly, the Schedule A assets, the Schedule B assets, the independent Chairman of the Boards of the Hold Separate Companies, or any of their operations or businesses; provided, however, that respondent may exercise only such direction and control over the Hold Separate Companies as is necessary to assure compliance with this Agreement or the Consent Order, or with all applicable laws.
- f. Respondent shall maintain the viability, competitiveness, and marketability of the Schedule A assets and the Schedule B assets; shall not sell, transfer, or encumber the Schedule A assets or the Schedule B assets (other than in the normal course of business); and shall not cause or permit the destruction, removal, wasting, or deterioration, or otherwise impair the viability, competitiveness, or marketability of the Schedule A assets or the Schedule B assets.

- g. Except for the respondent's Hold Separate Companies Boards member, respondent shall not permit any director, officer, employee, or agent of respondent to also be a director, officer, or employee of the Hold Separate Companies.
- h. The Hold Separate Companies shall be staffed with sufficient employees to maintain the viability and competitiveness of the Schedule A assets and the Schedule B assets, which employees shall be selected from the existing employee base of each facility or entity and may also be hired from sources other than these facilities and entities.
- i. Respondent shall not employ, or make offers of employment to, any person employed by the Schedule A assets or the Schedule B assets in any capacity relating to the management or marketing activities of those assets. Respondent shall encourage and facilitate continued employment by the Schedule A assets and the Schedule B assets of such employees; shall not offer any incentive to such employees to cease employment with the Schedule A assets or the Schedule B assets, or to accept other employment with respondent; and shall take all actions necessary to remove any impediments that may deter such employees from continuing their employment with the Schedule A assets or the Schedule B assets, including but not limited to, the payment, or transfer for the account of the employee, of all accrued bonuses, pensions and other accrued benefits to which such employees would otherwise have been entitled had they remained in the employment of respondent.
- j. With the exception of the respondent's Hold Separate Companies Boards Member, respondent shall not change the composition of the Hold Separate Companies Boards unless the independent Chairman consents. The independent Chairman shall have power to remove members of the Hold Separate Companies Boards for cause and to require respondent to appoint replacement members to the Hold Separate Companies Boards as provided in Paragraph 3.c. Respondent shall not change the composition of the management of the Hold Separate Companies, except that the Hold Separate Companies Boards shall have the power to remove management employees for cause.

- k. If the independent Chairman ceases to act or fails to act diligently, a substitute Chairman shall be appointed in the same manner as provided in Paragraph 3.c. of this Agreement.

- l. Except as required by law, and except to the extent that necessary information is exchanged in the course of evaluating the Acquisition, defending investigations, defending or prosecuting litigation, obtaining legal advice, negotiating agreements to divest assets, or complying with this Agreement or the Consent Order, respondent shall not receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about the Hold Separate Companies, the activities of the hospitals operated by the Hold Separate Companies Boards, the activities of Monarch, the Schedule A assets, or the Schedule B assets. Nor shall the Hold Separate Companies or the Hold Separate Companies Boards receive or have access to, or use or continue to use, any Material Confidential Information not in the public domain about respondent and relating to respondent's acute care hospitals. Respondent may receive, on a regular basis, aggregate financial information relating to the Hold Separate Companies necessary and essential to allow respondent to prepare United States consolidated financial reports, tax returns, Medicare or Medicaid cost reports, and personnel reports. Any such information that is obtained pursuant to this subparagraph shall be used only for the purposes set forth in this subparagraph. ("Material Confidential Information," as used herein, means competitively sensitive or proprietary information not independently known to an entity from sources other than the entity to which the information pertains, and includes, but is not limited to, customer lists, price lists, health plan contracts, marketing methods, patents, technologies, processes, or other trade secrets.)

- m. Except as permitted by this Agreement, the respondent's Hold Separate Companies Boards member shall not, in his or her capacity as a Hold Separate Companies Boards member, receive Material Confidential Information, and shall not disclose any such information received under this Agreement to respondent, or use it to obtain any advantage for respondent. The respondent's Hold Separate Companies Boards member shall enter a confidentiality agreement prohibiting disclosure of

Material Confidential Information. The respondent's Hold Separate Companies Boards member shall participate in matters that come before the Hold Separate Companies Boards only for the limited purposes of considering a capital investment or other transaction exceeding \$250,000, approving any proposed budget and operating plans, and carrying out respondent's responsibilities under this Agreement and the Consent Order. Except as permitted by this Agreement, the respondent's Hold Separate Companies Boards member shall not participate in any matter, or attempt to influence the votes of the other members of the Hold Separate Companies Boards with respect to matters, that would involve a conflict of interest if respondent and the Hold Separate Companies were separate and independent entities.

- n. Any material transaction of the Hold Separate Companies that is out of the ordinary course of business must be approved by a majority vote of the Hold Separate Companies Boards; provided that the Hold Separate Companies shall engage in no transaction, material or otherwise, that is precluded by this Agreement.
- o. If necessary, respondent shall provide the Hold Separate Companies with sufficient working capital to operate the Schedule A assets and the Schedule B assets at their current rate of operation, to fulfill respondent's obligations under the loan agreement identified in Schedule A of the Consent Order, and to carry out any capital improvement plans for the Schedule A assets and the Schedule B assets that have already been approved.
- p. Respondent shall continue to provide the same support services to the Schedule A assets and the Schedule B assets as are being provided to them by OrNda as of the date this Agreement is signed. Respondent may charge the Hold Separate Companies the same fees, if any, charged by OrNda as of December 1, 1996 for such support services. Respondent's personnel providing such support services must retain and maintain all Material Confidential Information of the Schedule A assets and the Schedule B assets on a confidential basis, and, except as is permitted by this Agreement, such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any person whose employment involves any of respondent's businesses. Such personnel shall also execute

confidentiality agreements prohibiting the disclosure of any Material Confidential Information of the Schedule A assets and the Schedule B assets.

- q. During the period commencing on the date this Agreement is effective and terminating on the earlier of (i) August 1, 1997, or (ii) the date contemplated by subparagraph 2.a.(ii) (the "Initial Divestiture Period"), respondent shall make available for use by the Hold Separate Companies funds sufficient to perform all necessary routine maintenance to, and replacements of, the Schedule A assets and the Schedule B assets ("normal repair and replacement"). Provided, however, that in any event, respondent shall provide the Hold Separate Companies with such funds as are necessary to maintain the viability, competitiveness, and marketability of the Schedule A assets and the Schedule B assets.
- r. Respondent shall circulate, to its management employees responsible for the operation of acute care hospitals in San Luis Obispo County, California, a notice of this Hold Separate and Consent Order in the form attached as Attachment A.
- s. The Hold Separate Companies Boards shall serve at the cost and expense of respondent. Respondent shall indemnify the Hold Separate Companies Boards against any losses or claims of any kind that might arise out of its involvement under this Hold Separate Agreement, except to the extent that such losses or claims result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the Hold Separate Companies Boards directors.
- t. The Hold Separate Companies Boards shall have access to and be informed about all companies who inquire about, seek, or propose to acquire the Schedule A assets or the Schedule B assets.
- u. Within thirty (30) days after the date this Agreement is accepted by the Commission and every thirty (30) days thereafter until this Agreement terminates, the Hold Separate Companies Boards shall together report in writing to the Commission concerning those Boards' efforts to accomplish the purposes of this Hold Separate.

4. To ensure the complete independence of Monarch from respondent (meaning here and hereinafter, Tenet excluding the Schedule A assets and the Schedule B assets), and to ensure that no competitive Monarch information is disclosed to respondent, respondent shall establish a trust for Tenet's Monarch stock, on the following terms and conditions:

- a. Prior to, or simultaneously with the Acquisition, respondent shall establish a voting trust for Tenet's Monarch stock, for which the Trustee shall be the independent Chairman of the Hold Separate Companies Boards. The Trustee shall exercise any and all voting rights of Tenet's Monarch stock, on all matters (including without limitation the election or removal of directors), voted on by Monarch shareholders, whether at a regular or special meeting, or pursuant to a unanimous written consent. The Trustee shall vote all shares of Tenet's Monarch stock in the same proportion as all other shares of Monarch's stock are voted with respect to such matters. The Trustee shall also be present, in person or by proxy, at all annual or special meetings of Monarch shareholders, so that Tenet's Monarch stock may be counted for purposes of determining the presence of a quorum at such meetings.
- b. Tenet shall not use its holdings of Monarch stock, or any loan agreements with Monarch:
 - (i) to control or influence the conduct of Monarch's business, or Monarch's business relationships with French Hospital Medical Center; or
 - (ii) to obtain Material Confidential Information of Monarch, except Monarch financial information necessary and essential to allow respondent to prepare United States consolidated financial reports and tax returns, to allow respondent to prepare Medicare or Medicaid cost reports, or for use by the Hold Separate Companies in order to carry out the loan agreement identified in Schedule A of the Consent Order (which Monarch information shall be used only for the purposes set forth in this subparagraph).
- c. Tenet shall not permit any director, officer, employee, agent, or representative of Tenet to serve on Monarch's board of directors.

5. Should the Commission seek in any proceeding to compel respondent to divest the Schedule A assets and/or the Schedule B assets, as provided in the Consent Order, or to seek any other injunctive or equitable relief for any failure to comply with the Consent Order or this Agreement, or in any way relating to the Acquisition, as defined in the Consent Order, respondent shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Acquisition. Respondent also waives all rights to contest the validity of this Agreement.

6. To the extent that this Agreement requires respondent to take, or prohibits respondent from taking, certain actions that otherwise may be required or prohibited by contract, respondent shall abide by the terms of this Agreement or the Consent Order and shall not assert as a defense such contract requirements in a civil penalty action brought by the Commission to enforce the terms of this Agreement or the Consent Order.

7. For the purposes of determining or securing compliance with this Agreement, and subject to any legally recognized privilege, and upon written request with reasonable notice to respondent made to its principal office, respondent shall permit any duly authorized representatives of the Commission:

- a. Access, during office hours of respondent and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of the respondent relating to compliance with this Agreement;
- b. Upon five (5) days' notice to respondent and without restraint or interference from respondent, to interview officers, directors, or employees of respondent, who may have counsel present, regarding such matters.

8. This Agreement shall not be binding until approved by the Commission.

ATTACHMENT A

NOTICE OF DIVESTITURE AND REQUIREMENT FOR CONFIDENTIALITY

Tenet Healthcare Corporation has entered into a Consent Agreement and Agreement to Hold Separate with the Federal Trade Commission relating to the divestiture of certain assets, in or near San Luis Obispo County, California, that Tenet is to acquire through its acquisition of OrNda Healthcorp.

Until after the divestitures required under the Consent Agreement are completed, OrNda's hospitals and other businesses in San Luis Obispo County, California, as well as those in Santa Barbara County, California (collectively the "Hold Separate Assets"), must be managed and maintained as a separate, ongoing business, independent of all other Tenet businesses. All competitive information relating to the Hold Separate Assets must be retained and maintained by the persons involved in the operation of those Assets on a confidential basis, and such persons shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any other Tenet business. Similarly, all such persons involved in Tenet shall be prohibited from providing, discussing, exchanging, circulating, or otherwise furnishing any such information to or with any other person whose employment involves any of the Hold Separate Assets. (These confidentiality requirements are subject to limited exceptions, set forth in the Hold Separate Agreement.)

Monarch Health Systems is also to remain independent of Tenet's businesses, other than the Hold Separate Assets, pending Tenet's divestiture of its Monarch stock.

Any violation of the Consent Agreement or the Agreement to Hold Separate (which is incorporated by reference as part of the Consent Order to which Tenet has agreed), may subject Tenet to civil penalties and other relief as provided by law.