ORIGINAL

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of	)	
	)	
PROMEDICA HEALTH SYSTEM, INC.	)	Docket No. 9346
	)	
a corporation.	)	**REDACTED PUBLIC VERSION**
	)	

RESPONDENT PROMEDICA HEALTH SYSTEM, INC.'S ANSWER TO COMPLAINT

Pursuant to 16 C.F.R. § 3.12, Respondent ProMedica Health System, Inc. ("ProMedica"), by and through its undersigned counsel, answers the Federal Trade Commission's ("FTC") January 6, 2011 Complaint as follows:

RESPONSES TO THE FTC'S ALLEGATIONS

ProMedica denies the allegations and legal conclusions contained in the FTC's unnumbered introductory paragraph.

I.

NATURE OF THE CASE

1. ProMedica's acquisition (the "Acquisition") of St. Luke's Hospital ("SLH" or "St. Luke's") threatens to substantially lessen competition for critical healthcare services in Lucas County, Ohio. This diminished competition will stifle beneficial quality improvements and will result in significant increases in healthcare costs to local residents, many of whom are already struggling to keep up with rising medical expenses.

ANSWER: ProMedica denies the allegations in Paragraph 1.

2. ProMedica effectively acquired and took control of its nearby competitor St. Luke's upon consummation of a joinder agreement on August 31, 2010. Ordinary course documents reveal that a principal motivation for the Acquisition was to gain enhanced bargaining leverage with health plans and the ability to raise prices for services. Indeed, SLH's internal strategic plans unambiguously reveal that the Acquisition could allow ProMedica to [redacted] Elsewhere, SLH's documents observe that an [redacted] and could [redacted]

ANSWER: ProMedica admits that by virtue of the Joinder Agreement and amendments to governing documents contemplated by the Joinder Agreement, consummated on August 31, 2010 (effective as of September 1, 2010), ProMedica became the sole corporate member or shareholder of St. Luke's and its affiliated entities. ProMedica further admits that the phrases quoted in Paragraph 2 were made by St. Luke's in documents it produced to the FTC, but denies that the quoted statements came from St. Luke's strategic plans, constitute admissions by ProMedica or St. Luke's, represent ProMedica's reason for pursuing the joinder or its belief about the joinder's effect or benefit to the community, or stand for the propositions alleged by the FTC. Further answering, ProMedica denies that its motivation for the joinder was to gain enhanced bargaining leverage because these allegations ignore the fact that St. Luke's commercial contract rates failed to cover its costs to treat the patients of its commercial payors. This caused St. Luke's to lose money on virtually every patient that it treated and contributed to St. Luke's negative operating margins that increased every year from 2007 until the joinder. Recognizing that its unsustainable contract rates were the primary cause of its deteriorated financial condition, St. Luke's began renegotiating its commercial rates with its two largest payors, with the intent of seeking significant rate increases, long before St. Luke's and ProMedica began discussing the joinder. ProMedica denies the remaining allegations in Paragraph 2.

3. Rate increases would generate higher profits for the Respondent, but – as SLH's internal business plans acknowledge – would impose significant burdens on local employers and employees, either directly or through higher health insurance premiums, co-pays, and other out-of-pocket healthcare expenses. These cost increases have real health-related consequences, as they inevitably force some employers to reduce or eliminate health-insurance coverage for their employees, force some families to drop their health insurance altogether, and cause others to delay or forgo checkups and other medical care that they can no longer afford.

ANSWER: ProMedica denies the allegations in Paragraph 3.

4. The Acquisition reduces the number of competitors in Lucas County for general acute-care inpatient hospital services from four to three and, for inpatient obstetrical services, from three to two. After the Acquisition, ProMedica – [redacted] – has just two competitors in Lucas County for general acute-care hospital services: Mercy Health Partners ("Mercy") and University of Toledo Medical Center ("UTMC"). Because UTMC does not offer obstetrical services, there is even less competition for those services; the Acquisition has resulted in a duopoly, with ProMedica facing only Mercy as a competitor.

ANSWER: ProMedica admits that UTMC does not offer inpatient obstetrical services, but denies the remaining allegations in Paragraph 4.

5. Post-Acquisition, ProMedica now controls nearly 60% of the general acute-care inpatient hospital services market in Lucas County and over 80% of the market for obstetrical services, as measured by patient days. These extraordinarily high market shares and concentration levels render the Acquisition presumptively unlawful *in both relevant markets* – general acute-care services and obstetrics – under the relevant case law and the U. S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines ("Merger Guidelines"). This strong presumption of illegality is independently confirmed and supported by an array of qualitative and quantitative evidence from sources including health plans, local employers, third-party hospitals, and the merged parties themselves.

ANSWER: ProMedica denies the allegations in Paragraph 5, in part, because the Complaint's representation of ProMedica's and St. Luke's market shares overstates the combined system's competitive significance, and ignores the fact that St. Luke's admits only between 3,000 and 3,500 commercially-insured patients each year, less than 10 per day. Mercy, with its three hospitals that offer the same range of services that ProMedica's hospitals offer in similar locations, has acted, and will continue to act, as a competitive constraint on ProMedica's ability to raise its or St. Luke's rates above competitive levels. Moreover, the Complaint's representation of ProMedica's and St. Luke's market shares also ignores the significant under-utilized bed capacity at Mercy and UTMC that permits physicians and payors to shift their patients from ProMedica and St. Luke's to Mercy or UTMC, without the patient having to change his or her physician, even if ProMedica were to attempt to exercise market power in the way the FTC alleges. Further answering, ProMedica denies the FTC's allegations with respect to inpatient obstetrical services as misleading because St. Luke's offers a more limited range of obstetrical services than either ProMedica or Mercy. St. Luke's had less than two discharges for obstetrical and obstetrical-related services per day during the past two years. Physicians, who generally also have privileges at Mercy or ProMedica, tend to refer patients whose deliveries may be more complicated to Mercy or ProMedica hospitals. ProMedica denies the remaining allegations in Paragraph 5.

6. The price and non-price competition eliminated by the Acquisition will not be replaced by other hospitals in the next several years, if ever. Significant barriers to entry and expansion, including regulatory requirements and funding needs, prevent new hospitals from entering the market and prevent existing hospitals from substantially expanding existing services. The cost of opening a new obstetrics department in an existing hospital is also prohibitive. Finally, the Respondent's purported efficiencies are also insufficient to offset the significant anticompetitive harm likely to result from the Acquisition.

ANSWER: ProMedica denies the allegations in Paragraph 6.

II.

RESPONDENT

7. ProMedica is a not-for-profit healthcare system incorporated under and by virtue of the laws of Ohio. ProMedica is headquartered at 1801 Richard Road, Toledo, Ohio, 43607. ProMedica's healthcare system serves northwestern and west-central Ohio and southeastern Michigan.

ANSWER: ProMedica admits the allegations in Paragraph 7.

8. Excluding St. Luke's, ProMedica operates three general acute-care hospitals in Lucas County, Ohio: The Toledo Hospital ("TTH"); Flower Hospital ("Flower"); and Bay Park Community Hospital ("Bay Park"). ProMedica also owns Paramount Health Care ("Paramount"), a for-profit corporation that operates one of the largest commercial health plans in Lucas County, and Toledo Children's Hospital. ProMedica is by far the largest employer of physicians in Lucas County. In 2009, ProMedica's revenues totaled approximately $1.6 billion.

ANSWER: ProMedica admits the allegations in Paragraph 8.

9. As of August 31, 2010, ProMedica effectively acquired and took control of St. Luke's, a formerly independent, not-for-profit acute-care community hospital located at 5901 Monclova Road, Maumee, Ohio, 43537. St. Luke's was broadly recognized as a high-quality, low-cost hospital, which generated revenues of approximately $156 million in 2009.

ANSWER: ProMedica admits that by virtue of the Joinder Agreement and amendments to governing documents contemplated by the Joinder Agreement, ProMedica became the sole corporate member or shareholder of St. Luke's and its affiliated entities. ProMedica also admits that St. Luke's was formerly an independent, not-for-profit acute care community hospital located at 5901 Monclova Road, Maumee, Ohio, 43537, that was recognized as a high quality, low cost hospital. Further answering, ProMedica states that St. Luke's lost approximately $15.2 million in 2009. ProMedica denies the remaining allegations in Paragraph 9.

III.

JURISDICTION

10. ProMedica, through its relevant operating subsidiaries, is, and at all relevant times has been, engaged in commerce or in activities affecting commerce, within the meaning of the Clayton Act. The Acquisition constitutes an acquisition under Section 7 of the Clayton Act.

ANSWER: ProMedica admits the allegations in Paragraph 10.

IV.

THE ACQUISITION

11. By virtue of the joinder agreement consummated on August 31, 2010, ProMedica currently is the sole corporate member of St. Luke's and its affiliated entities, with control and ultimate authority over all significant business decisions at St. Luke's. ProMedica also acquired ownership, including all stock interest, in certain SLH for-profit entities. Thus, ProMedica now controls SLH's strategic planning, operating and capital budgets, large unbudgeted expenditures, and significant borrowing and contracting. Importantly, ProMedica also will negotiate SLH's contracts with commercial health plans.

ANSWER: ProMedica admits that by virtue of the Joinder Agreement and amendments to governing documents contemplated by the Joinder Agreement, ProMedica became the sole corporate member or shareholder of St. Luke's and its affiliated entities. ProMedica denies the remaining allegations in Paragraph 11.

V.

THE RELEVANT SERVICE MARKETS

A.

General Acute-Care Inpatient Services Market

12. The Acquisition threatens substantial harm to competition in two relevant service markets. The first is general acute-care inpatient hospital services sold to commercial health plans, which encompasses a broad cluster of basic medical and surgical diagnostic and treatment services that include an overnight hospital stay, such as emergency services, internal medicine, and minor surgeries. It is appropriate to evaluate the Acquisition's likely effects across this entire cluster of services, rather than analyzing each service independently, because the group of services is offered by the same competitors under similar competitive conditions.

ANSWER: ProMedica admits that general acute-care inpatient hospital services sold to commercial health plans constitutes a valid service market. ProMedica denies that the joinder threatens substantial harm to competition in any relevant service market and, therefore, denies the remaining allegations in Paragraph 12.

13. The general acute-care inpatient services market excludes outpatient services because health plans and patients could not substitute outpatient services for inpatient care in response to a price increase. Similarly, more sophisticated and specialized tertiary and quaternary services, such as major surgeries and organ transplants, also are properly excluded from the relevant market because they are not substitutes for general acute-care inpatient services.

ANSWER: ProMedica admits the allegations in Paragraph 13. Further answering, ProMedica states that some of the less sophisticated general acute care services that are presently offered on an inpatient basis are likely to be available on an outpatient basis as the provisions of the Patient Protection and Affordable Care Act and healthcare reform take effect.

B.

Inpatient Obstetrical Services

14. The Acquisition also threatens substantial competitive harm in the market for inpatient obstetrical services. This market encompasses hospital services provided for labor and delivery of newborns. No other hospital services are reasonably interchangeable with inpatient obstetrical services, making this an appropriate relevant market within which to analyze the likely effects of the Acquisition.

ANSWER: ProMedica denies the allegations in Paragraph 14.

15. Within the broader relevant market for general acute-care services, it is appropriate to define a narrower relevant service where it more fully accounts for unique competitive conditions. Here, these unique competitive conditions include that there are fewer hospitals offering inpatient obstetrical services in Lucas County: neither UTMC, one of the two remaining competitors in the market for general acute-care inpatient services, nor Mercy's St. Anne Hospital provide obstetrical services.

ANSWER: ProMedica admits that neither UTMC nor Mercy's St. Anne Hospital presently provide inpatient obstetrical services, but states that Mercy's St. Anne Hospital has in the past. ProMedica denies the remaining allegations in Paragraph 15.

VI.

THE RELEVANT GEOGRAPHIC MARKET

16. The relevant geographic market in which to analyze the effects of the Acquisition for each relevant service market is Lucas County, Ohio.

ANSWER: ProMedica denies the allegations in Paragraph 16.

17. The appropriate geographic market is determined by examining the geographic boundaries within which a hypothetical monopolist for the services at issue could profitably raise prices by a small but significant amount.

ANSWER: ProMedica denies the allegations in Paragraph 17.

18. Due to residents' clear preference for local hospital care, health plans must have a strong representation of Lucas County hospitals in their provider networks in order to satisfy employers and their employees. Health plans could not steer members to hospitals outside of Lucas County in response to rate increases at the Lucas County hospitals. Thus, a hypothetical monopolist that controlled *all* of the hospitals, or all obstetrical services, in Lucas County could profitably increase rates by at least a small but significant amount. Hospitals outside of Lucas County do not meaningfully compete with Lucas County hospitals.

ANSWER: ProMedica denies the allegations in Paragraph 18.

19. According to the merged hospitals' own ordinary-course documents, ProMedica and St. Luke's do not regard non-Lucas County hospitals as significant competitors. Instead, ProMedica and St. Luke's have focused their competitive efforts on – and have repeatedly computed market shares based on – hospitals in and around Toledo. Patient discharge data demonstrates that less than three percent of Lucas County residents leave the county for general acute-care or obstetrical services.

ANSWER: ProMedica denies the allegations in Paragraph 19.

VII.

MARKET STRUCTURE AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY

20. The Acquisition reduces the number of general acute-care competitors in Lucas County from four to three, leaving ProMedica facing only two competitors, Mercy and UTMC. Because UTMC does not provide obstetrical services, the Acquisition reduces the competitors for obstetrical services from three to two, resulting in a duopoly of ProMedica and Mercy.

ANSWER: ProMedica admits that in Lucas County, ProMedica and St. Luke's compete with UTMC and the Mercy hospitals of Mercy St. Vincent, Mercy St. Charles, and Mercy St. Anne. ProMedica further admits that UTMC does not provide inpatient obstetrical services. ProMedica denies the remaining allegations in Paragraph 20 because the FTC's allegations grossly overstate the competitive significance of the joinder by ignoring the excess capacity of services in the Toledo market. It is apparent from examining the number of staffed beds as compared to licensed beds that the Toledo marketplace can no longer support four independent competing hospital systems. Indeed, the population under-utilizes even the number of staffed beds. ProMedica denies the remaining allegations in Paragraph 20.

21. Under relevant case law and the Merger Guidelines, the Acquisition is presumptively unlawful in both relevant service markets. ProMedica's post-Acquisition market share in the general acute-care inpatient services market approaches 60%, as measured by patient days. In the market for inpatient obstetrical services, the post-Acquisition market share exceeds 80%. These extraordinarily high market shares easily surpass levels that have been found presumptively unlawful by the Supreme Court.

ANSWER: ProMedica denies the allegations in Paragraph 21.

22. The Merger Guidelines measure market concentration using the Herfindahl-Hirschman Index ("HHI"). Under that test, a merger or acquisition is presumed likely to create or enhance market power (and presumed illegal) when the post-merger HHI exceeds 2500 points and the merger or acquisition increases the HHI by more than 200 points. The market concentration levels here exceed these thresholds by a wide margin. The post-Acquisition HHI is 4391 in the general acute-care inpatient services market, with an increase of 1078 points. HHI levels are even higher in the obstetrical services market, with a post-Acquisition HHI of 6854 and an Acquisition-related increase of 1323. The HHI figures for each relevant service market are summarized in the following tables.

General Acute-Care In Patient Services		
Hospital/System	**Pre-Acquisition Market Share**	**Post-Acquisition Market Share**
ProMedica	46.8%	58.3%
Mercy	28.7%	28.7%
St. Luke's	11.5%	--
UTMC	13.0%	13.0%
	Pre-Acquisition HHI	3312.5
	Prost-Acquisition HHI	4390.7
	HHI Increase	1078.2

Obstetrical Services		
Hospital/System	**Pre-Acquisition Market Share**	**Post-Acquisition Market Share**
ProMedica	71.2%	80.5%
Mercy	19.5%	19.5%
St. Luke's	9.3%	--
	Pre-Acquisition HHI	5531.2
	Prost-Acquisition HHI	6853.7
	HHI Increase	1322.5

ANSWER: ProMedica admits that the U.S. Department of Justice and Federal Trade Commission's Merger Guidelines measure market concentration using the HHI. ProMedica further admits that the Merger Guidelines state that a merger or acquisition is presumed likely to create or enhance market power when the post-merger HHI exceeds 2500 points and the merger or acquisition increases the HHI by more than 200 points. ProMedica denies that St. Luke's joinder with ProMedica will create or enhance market power, in part for the reasons stated in its denial of Paragraph 5. ProMedica denies the remaining allegations in Paragraph 22.

VIII.

ANTICOMPETITIVE EFFECTS

A.

Increased Bargaining Leverage for ProMedica

23. By eliminating significant, beneficial competition between Respondent ProMedica and St. Luke's, the Acquisition vests ProMedica with an increased ability and incentive to demand supra-competitive reimbursement rates from commercial health plans and their membership.

ANSWER: ProMedica denies the allegations in Paragraph 23.

24. Before the Acquisition, ProMedica and St. Luke's were close competitors in the markets for general acute-care inpatient services and inpatient obstetrical services, in terms of geographic proximity and similarity of service offerings. Indeed, SLH's CEO testified that ProMedica had been SLH's [redacted] for inpatient hospital services and obstetrical services in its main service area. For its part, ProMedica was so focused on St. Luke's as a key competitor before the Acquisition that it [redacted] ProMedica's documents also expressly acknowledge that [redacted]

ANSWER: ProMedica admits that St. Luke's CEO provided the snippet of testimony quoted in Paragraph 24. However, his complete testimony in this regard was as follows:

> Q. [redacted]
>
> A. [redacted]

and

> Q. [redacted]
>
> A. [redacted]

ProMedica denies that the quoted statements constitute admissions by ProMedica or St. Luke's or stand for the propositions alleged by the FTC. ProMedica also denies that it was so focused on St. Luke's as a key competitor before the joinder that it [redacted] ProMedica, like other hospitals in the relevant markets the FTC alleges, offers health plans greater discounts in exchange for an assurance of more patient volume because it is likely to serve more of a health plan's patients if that health plan's network has fewer other in-network hospital providers. ProMedica's discounts reduce health plans' costs, making them more competitive against other health plans. ProMedica denies the remaining allegations in Paragraph 24.

25. Prior to the Acquisition, St. Luke's had significantly less bargaining leverage than ProMedica, a far more dominant provider system in Lucas County. As a result, St. Luke's negotiated substantially lower rates with health plans than ProMedica did. ProMedica and St. Luke's will now be able to use their enhanced [redacted] to raise SLH's rates to levels at least equal to the other ProMedica hospitals in Lucas County. Indeed, SLH's motivation for entering into the Acquisition was [redacted] An increase in St. Luke's rates merely to the levels of the other ProMedica hospitals could force employers and employees to pay from [redacted] more for inpatient services obtained there.

ANSWER: ProMedica admits that the phrases quoted in Paragraph 25 were made by St. Luke's in documents it produced to the FTC, but denies that the quoted statements constitute admissions by ProMedica or St. Luke's, represent ProMedica's reason for pursuing the joinder or its belief about the joinder's effect or benefit to the community, or stand for the propositions alleged by the FTC. Further answering, as stated in its denial to the allegations in Paragraph 2, these allegations ignore the fact that St. Luke's had begun to renegotiate higher rates with its two largest payors long before St. Luke's and ProMedica began discussing the joinder because St. Luke's low rates did not cover its costs to treat its commercially-insured patients. ProMedica denies the remaining allegations in Paragraph 25.

26. With the addition of St. Luke's to its hospital system, ProMedica has become a "must-have" system for health plans seeking to do business in Lucas County, because health plans are no longer able to offer a commercially viable provider network without including

ProMedica's hospitals. Health plans no longer have the ability to drop ProMedica from their networks, or even credibly threaten to do so, as before. In fact, in at least the past decade, no health plan has offered a network in Lucas County consisting of only the Mercy hospitals and UTMC, as they would have to do without agreeing to ProMedica's rates today. Thus, health plans in the area now must either reach agreement with ProMedica, likely at substantially higher rates, offer a commercially unattractive hospital network to their members, or even be forced to exit the Lucas County market altogether.

ANSWER: ProMedica denies that it has become a "must-have" system in Lucas County because, until about 2008, commercial payors offered health insurance products in the Toledo marketplace that did not include all of the hospital providers in the market, including ProMedica. For example, Medical Mutual of Ohio included Mercy's hospitals, UTMC, and St. Luke's as its in-network providers, but did not include ProMedica's hospitals. The addition to ProMedica of St. Luke's, which offers neither unique services nor a competitively-advantageous location, will not prevent payors from offering a competitive health insurance plan with Mercy's hospitals and UTMC as its hospital providers. Further answering, ProMedica states that St. Luke's admits only about ten commercially-insured patients for general acute-care inpatient services, including less than two for inpatient obstetrical services, per day. ProMedica denies the remaining allegations in Paragraph 26.

27. This significant change in the negotiating dynamic gives ProMedica much-enhanced bargaining clout in contract negotiations and the ability to extract higher rates for inpatient services at St. Luke's *and* at its other Lucas County hospitals. ProMedica is widely recognized [redacted] as having the highest rates in Lucas County and for making aggressive rate increase demands, relative to other hospitals, and particularly St. Luke's. In fact, ProMedica's CEO acknowledged to other senior executives in 2010 that health plans viewed ProMedica as [redacted] Health plans predict [redacted]. Indeed, this ability to demand higher rates was a principal motivation behind the Acquisition.

ANSWER: ProMedica admits that the phrases quoted in Paragraph 27 were made by ProMedica in documents it produced to the FTC, but denies that the quoted statements constitute admissions by ProMedica or St. Luke's, represent the value or quality of ProMedica's services, or stand for the propositions alleged by the FTC. ProMedica denies the remaining allegations in Paragraph 27.

28. ProMedica's ownership of the for-profit commercial health plan Paramount may further increase its ability and incentive to increase rates. If other health plans must pay higher rates to access ProMedica's hospitals or, worse yet, must exit Lucas County altogether, ProMedica would benefit because Paramount would capture some of the business of its disadvantaged, or departed, health-plan competitors. As a result, ProMedica's ownership of Paramount may render a post-Acquisition price increase even more profitable – and therefore more likely.

ANSWER: ProMedica denies the allegations in Paragraph 28.

29. Price increases resulting from the Acquisition will be passed on to local employers and their employees. In Lucas County, nearly 70% of commercial health-plan membership is self-insured. Self-insured employers rely on health plans only to negotiate rates and provide administrative support; the employers themselves pay the full cost of their employees' healthcare claims. As a result, self-insured employers immediately and directly bear the full burden of higher rates. Fully-insured employers also are inevitably harmed by higher rates, because health plans pass on at least a portion of hospital rate increases to these customers.

ANSWER: ProMedica lacks knowledge and information sufficient to admit or deny the second sentence in Paragraph 29 and, therefore, denies it. ProMedica denies the remaining allegations in Paragraph 29.

30. Employers, in turn, must pass on their increased healthcare costs to their employees, in whole or in part. Employees will bear these costs in the form of higher premiums, higher co-pays, reduced coverage or restricted services. Some Lucas County residents will forgo or delay necessary healthcare services because of the higher costs.

ANSWER: ProMedica denies the allegations in Paragraph 30.

B.

The Loss of Quality Competition

31. The Acquisition also will reduce the quality and breadth of services available in Lucas County.

ANSWER: ProMedica denies the allegations in Paragraph 31.

32. Competition between ProMedica and St. Luke's has spurred both parties to increase quality of care, offer additional services, and has fostered other, non-financial benefits

for the residents of Lucas County. These important elements of competition will be lost after the Acquisition.

ANSWER: ProMedica admits that ProMedica and St. Luke's have increased the quality of their care, offered additional services, and fostered other, non-financial benefits for the residents of Lucas County. ProMedica denies the remaining allegations in Paragraph 32.

33. Before the transaction, St. Luke's offered the highest quality healthcare service in Lucas County, and did so at the lowest cost. St. Luke's is consistently recognized by third-party quality-rating organizations as being in the top 10% of hospitals nationally, based on outcomes, cost, and patient satisfaction. The Acquisition of St. Luke's by ProMedica – a higher-cost, lower-quality competitor – will diminish the quality of care at St. Luke's. Indeed, SLH's CEO and Board [redacted]

ANSWER: ProMedica admits that St. Luke's offers high-quality healthcare services in Lucas County at low costs, which is one of the reasons that St. Luke's is a desirable addition to ProMedica. ProMedica further admits that third-party quality rating organizations have recognized St. Luke's as being in the top ten percent of hospitals nationally, based on outcomes, cost, and patient satisfaction. ProMedica denies, however, that St. Luke's can sustain its high-quality services at low costs absent the joinder because its deteriorating financial condition reflects the fact that the reimbursement rates that St. Luke's receives from both commercial payors and the Government do not adequately compensate St. Luke's for the services it provides. ProMedica denies the remaining allegations in Paragraph 33.

IX.

ENTRY BARRIERS

34. Neither hospital entry nor expansion by the two remaining hospitals will deter or counteract the Acquisition's likely harm to competition in the relevant service markets.

ANSWER: ProMedica denies the allegations in Paragraph 34.

35. New hospital entry or significant expansion in Lucas County would not be timely. Construction of a new general acute-care hospital would take more than two years from the initial planning stages to opening doors to patients. Significant expansion of services such as

obstetrics takes years as well, and requires time-consuming recruitment of additional professional staff.

ANSWER: ProMedica denies the allegations in Paragraph 35.

36. Entry and expansion also are unlikely due to very high construction costs, operating costs, and financial risk, along with significant hospital bed-overcapacity in the Toledo area. Constructing a new obstetrics department in an existing hospital would cost well over $1 million, with operating costs of tens of millions of dollars a year. Notably, [redacted] – even if prevailing rates for general acute-care and obstetrical services increase significantly – and SLH's strategic documents confirm that [redacted]

ANSWER: ProMedica lacks knowledge and information sufficient to admit or deny the third sentence in Paragraph 36 and, therefore, denies it. ProMedica admits that the phrases quoted in Paragraph 36 were made by St. Luke's in documents it produced to the FTC, but denies that the quoted statements constitute admissions by ProMedica or St. Luke's, represent the likelihood of a competitor's entry into the marketplace, or stand for the propositions alleged by the FTC. ProMedica denies the remaining allegations in Paragraph 36.

X.

EFFICIENCIES

37. Extraordinary merger-specific efficiencies are necessary to justify the Acquisition in light of its vast potential to harm competition. Such efficiencies are lacking here.

ANSWER: ProMedica denies the allegations in Paragraph 37.

38. Respondent's efficiency claims – described by one ProMedica executive as deriving from a mere [redacted] – are too speculative to be cognizable. Moreover, the fact that SLH is the lowest cost hospital in the area and, by all accounts, a "lean" operation, suggests any claimed operational cost savings should be viewed with skepticism. Even if the claimed efficiencies were substantiated and achievable, they are not merger-specific, as St. Luke's could have affiliated with suitable and interested alternative partners – such as UTMC – far less restrictive of competition.

ANSWER: ProMedica denies the allegations in Paragraph 38.

XI.

VIOLATIONS

COUNT I – ILLEGAL ACQUISITION

39. The allegations of Paragraphs 1 through 38 above are incorporated by reference as though fully set forth.

ANSWER: ProMedica repeats its responses to each of the allegations contained in Paragraphs 1 through 38 as if they were stated in this Paragraph 39.

40. The Acquisition may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

ANSWER: ProMedica denies the allegations in Paragraph 40.

WHEREFORE, Respondent ProMedica Health System Inc. respectfully requests that the ALJ (i) deny the FTC's contemplated relief; (ii) dismiss the Complaint in its entirety with prejudice; (iii) award ProMedica its costs of suit, including attorneys' fees, and (v) grant such other and further relief as the ALJ may deem proper.

Dated: January 25, 2011

Respectfully submitted,

By: /s/ DAVID MARX, JR

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CERTIFICATE OF SERVICE

I, Erin C. Arnold, hereby certify that I served a true and correct copy of the foregoing Respondent ProMedica Health System, Inc.'s Answer to Complaint upon the following individuals by electronic mail on January 25, 2011:

Matthew J. Reilly
Jeffrey H. Perry
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CERTIFICATE OF SERVICE

I, Christine G. Devlin, hereby certify that I served a true and correct copy of the foregoing Respondent ProMedica Health System Inc.'s Answer to the Complaint upon the following individuals by hand on January 31, 2011.

D. Michael Chappell, Chief Administrative Law Judge, Federal Trade Commission
Donald S. Clark, Secretary, Federal Trade Commission

I, Christine G. Devlin, hereby certify that I served a true and correct copy of the foregoing Respondent ProMedica Health System, Inc.'s Unopposed Motion to Place Answer on the Public Record upon the following individuals by electronic mail on January 25, 2011:

Matthew J. Reilly
Jeffrey H. Perry
Sara Y. Razi
Jeanne H. Liu
Alexis J. Gilman
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Christine Devlin

Christine G. Devlin

CERTIFICATE OF SERVICE

I, Christine G. Devlin, hereby certify that I served true and correct copies of Respondent ProMedica Health System Inc.'s Answer to the Complaint (Public Version) and Respondent ProMedica Health System Inc.'s Answer to the Complaint (Non-Public Version) upon the following individuals by hand on January 31, 2011:

Hon. D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H110
Washington, DC 20580

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room 172
Washington, DC 20580

I, Christine G. Devlin, hereby certify that I served true and correct copies of Respondent ProMedica Health System Inc.'s Answer to the Complaint (Public Version) and Respondent ProMedica Health System Inc.'s Answer to the Complaint (Non-Public Version) upon the following individuals by electronic mail on January 25, 2011:

Matthew J. Reilly
Jeffrey H. Perry
Sara Y. Razi
Jeanne H. Liu
Alexis J. Gilman
Stephanie L. Reynolds
Janelle L. Filson
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Christine Devlin
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