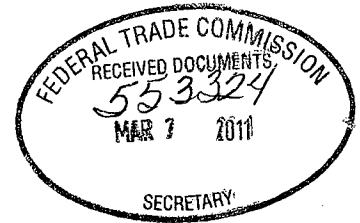


**ORIGINAL**

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**



\_\_\_\_\_  
In the Matter of )  
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 )  
PROMEDICA HEALTH SYSTEM, INC. )  
a corporation. )  
\_\_\_\_\_ )

Docket No. 9346  
**PUBLIC**

**RESPONDENT PROMEDICA HEALTH SYSTEM, INC.'S  
MOTION TO SET HEARING LOCATION**

Respondent ProMedica Health System, Inc. (“ProMedica”) respectfully moves for an order setting the location of the hearing in this matter in part in Toledo, Ohio, or another reasonably convenient location in Northwest Ohio, pursuant to Rule 3.41 of the Commission’s Rules of Practice, 16 C.F.R. § 3.41, which allows the Administrative Law Judge to “order hearings in more than one place. . . .” *Id.* § 3.41(b)(1).<sup>1</sup> The overwhelming majority of party and third party fact witnesses who are identified on the parties’ preliminary witness lists and are likely to testify at the administrative trial of this matter live and work in Northwest Ohio. Of the 89 witnesses identified on Complaint Counsel’s Preliminary Witness List, 83 are located in Ohio or Michigan. That includes nearly all of ProMedica’s employees, as well as witnesses from health insurance companies, competing hospitals, and local employers. It would be both more convenient for those witnesses and cost-efficient for the Commission for fact witnesses to testify at the hearing near their homes and offices in Northwest Ohio. The alternative – having large numbers of senior-level business people spend several days traveling to and from Washington, D.C. and staying in hotels while waiting to testify at the hearing – would be personally

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<sup>1</sup> ProMedica’s counsel has conferred with Complaint Counsel regarding this motion and Complaint Counsel do not consent to the conduct of hearings at a location other than Washington, D.C.

burdensome, disruptive to their businesses, and expensive. Moreover, several witnesses serve in key roles within ProMedica, with many in senior leadership positions overseeing the financially struggling St. Luke's Hospital ("St. Luke's"). Requiring these administrators to be absent for extended periods of time, hundreds of miles away from their places of work, is not just inconvenient; it is potentially detrimental to the successful operation of the hospital.

The administrative hearing currently set to begin on May 31, 2011, in Washington, D.C. should be held, at least in part, in Toledo, Ohio, because:

- Both parties to the joinder agreement, ProMedica and St. Luke's, whose hospitals are the subject matter of this case, are located in Toledo, Ohio;
- All ProMedica and St. Luke's employees likely to provide testimony or information regarding the joinder reside in Toledo, Ohio; and
- Almost all third party witnesses, including ProMedica's competitors and commercial payors, are located in Ohio or nearby Michigan.

The convenience of the witnesses, coupled with the overall cost-savings, justify holding the hearing, at least in part, in Northwest Ohio, instead of the District of Columbia.

### ARGUMENT

In cases where the vast majority of the fact witnesses are not located in or near the District of Columbia, this Court has held hearings in locations more convenient to the witnesses. *See, e.g., In re North Texas Specialty Physicians*, No. 9312, available at <http://ftc.gov/os/adjpro/d9312/031016aljschedorder.pdf> (holding the hearing near the witnesses in Forth Worth, Texas, Administrative Law Judge D. Michael Chappell presiding). That is the situation in this case.

Nearly all of the anticipated party and third-party witnesses work or reside in or around Toledo, Ohio. Of the 89 witnesses identified on Complaint Counsel's Preliminary Witness List, a copy of which is attached as Exhibit A, 83 are located in Ohio and neighboring Michigan.

Only 6 of Complaint Counsel's 89 witnesses are located elsewhere.<sup>2</sup> Besides the 36 expected witnesses from ProMedica and St. Luke's, witnesses from competing hospitals, local employers, physicians, and representatives from most of the health insurance plans that contract with ProMedica and St. Luke's all reside in Northwest Ohio and nearby Michigan.

Furthermore, both ProMedica and St. Luke's have their principal places of business in Toledo. As a result, all ProMedica and St. Luke's employees who may testify at the hearing in this case live in and around Toledo, Ohio. Those employees, particularly those with leadership positions overseeing St. Luke's, are integral to managing the operations of the financially struggling hospital.

Moreover, the Toledo-centered nature of this matter has been apparent for some time. When the Commission sought an order from the United States District Court for the District of Columbia in October 2010, to enforce the subpoenas and civil investigative demands ("CIDs") it issued to ProMedica regarding this matter, Judge Rosemary M. Collyer concluded that the court lacked jurisdiction to enforce the subpoenas and CIDs, noting that "[t]he subject-matter of this investigation is undeniably in Ohio" and "the three entities involved are all in the Toledo, Ohio, area." *See FTC v. ProMedica Health System Inc., et al.*, Civil Action No. 10-mc-0586 (RMC) (D.D.C. Oct. 12, 2010 Order), attached as Exhibit B. Judge Collyer also noted that the "[Commission] acknowledges, at a minimum, that any anti-competitive effects would be felt primarily, if not exclusively, in the Toledo, Ohio area." *Id.* at n. 2. Furthermore, the Commission's Complaint only focuses on the effect of the joinder on competition in Lucas County, Ohio. Complaint, ¶ 1.

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<sup>2</sup> Four of Complaint Counsel potential witnesses are located in New York, NY, Chicago, IL, Decatur, IL, and Plano, TX. Two witnesses – economic consultants hired by St. Luke's – are located in the vicinity of Washington, D.C.

A hearing in Northwest Ohio will impose significantly less travel expense (on the FTC) and require shorter periods of absence by nearly all of the witnesses than a hearing in the District of Columbia. Because the vast majority of witnesses for both Complaint Counsel and Respondent are from Northwest Ohio, they will be able to make the short drives from their homes to a hearing in Toledo, minimizing inconvenience and allowing these witnesses to quickly return to their jobs. If the hearing is held in Washington, D.C. instead, fact witnesses likely will be away from home for at least two or three days (one travel day in each direction and one day of testimony) and will miss those days of work. The FTC will be responsible for the significant expense associated with their travel and lodging in the District of Columbia.

ProMedica recognizes that holding the hearing in the District of Columbia would be more convenient for Complaint Counsel and the Court. Any inconvenience to the Commission associated with holding the hearing in Toledo or Northwest Ohio would be reduced by the fact that there is a federal courthouse (and other federal offices) in Toledo, and the FTC has a regional office in Cleveland. *See About the FTC, Offices and Bureaus, available at <http://www.ftc.gov/ro/eastcentral.shtm>.* In fact, the Commission has already worked from its Cleveland office in this matter when it conducted investigational hearings of third parties there. *See Mullins Investigational Hr'g Tr. (Sept. 13, 2010); Pirc Investigational Hr'g Tr. (Oct. 14, 2010); Sheridan Investigational Hr'g Tr. (Sept. 13, 2010).*

ProMedica recognizes that some witnesses, including both parties' expert witnesses, may be located in Washington D.C., or other east coast cities. If it is more convenient for the Court to hold hearings in Washington, D.C. for some days, or if it is necessary for administrative efficiency in connection with other cases, ProMedica suggests that the Court hear expert witnesses in hearing sessions in Washington, D.C. That would reduce the expense and burden

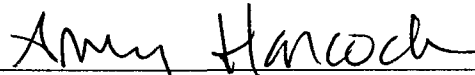
on all of the witnesses involved – including the 36 executives and employees of ProMedica and St. Luke’s, who have been identified as potential witnesses – as well as counsel for both the FTC and ProMedica, both parties’ expert witnesses, and the Court.

### CONCLUSION

The conduct of at least a portion of the administrative trial of this case in Toledo or Northwest Ohio will still allow the hearing “to proceed with all reasonable expedition.” 16 C.F.R. § 3.41(b)(1). It also will be more convenient for almost all witnesses and less expensive for the Commission. Accordingly, ProMedica respectfully moves for an order setting the location of the hearing in this case in part in Toledo, Ohio, or another reasonably convenient location in Northwest Ohio.

Dated: March 7, 2011

Respectfully submitted,



By: AMY HANCOCK

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*Attorneys for Defendant ProMedica  
Health System, Inc.*

UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION

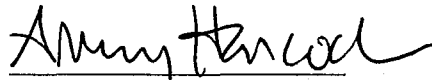
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Docket No. 9346  
PUBLIC

**CERTIFICATE OF CONFERENCE**

In accordance with the Court's Scheduling Order, Respondent's Counsel has conferred with Complaint Counsel in an effort in good faith to resolve by agreement the issues raised by Respondent's Motion to Set Hearing Location but has been unable to reach agreement on this issue.

Dated: March 7, 2011



Amy Hancock  
McDermott Will & Emery LLP  
*Counsel for Respondent ProMedica Health System,  
Inc.*

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

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In the Matter of )  
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a corporation. )  
\_\_\_\_\_ )

Docket No. 9346  
**PUBLIC**

**[PROPOSED] ORDER**

Upon consideration of Respondents' Motion to Set Hearing Location, any opposition thereto, and the Court being fully informed,

IT IS HEREBY ORDERED, that Respondent's Motion is GRANTED.

IT IS FURTHER ORDERED, that those portions of the Hearing involving testimony from witnesses residing or working in or near Northwest Ohio shall take place in Toledo, Ohio, or another reasonably convenient location in Northwest Ohio.

IT IS FURTHER ORDERED, that counsel for Respondents and Complaint Counsel shall confer prior to the commencement of the Hearing to develop a reasonable schedule for appearance of witnesses in Northwest Ohio, with the goal of minimizing costs and burden for the parties and maximizing convenience for witnesses.

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: \_\_\_\_\_



**CERTIFICATE OF SERVICE**

I, James B. Camden, hereby certify that on March 7, 2011, I filed via hand a paper original with signature and two paper copies of the foregoing Respondent ProMedica Health System Inc.'s Motion to Set Hearing Location with:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room H-113  
Washington, DC 20580

I also certify I delivered via electronic mail and hand delivery on March 7, 2011, a true and correct copy of the foregoing Respondent ProMedica Health System Inc.'s Motion to Set Hearing Location to:

Hon. D. Michael Chappell  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW, Room H-110  
Washington, DC 20580  
oalj@ftc.gov

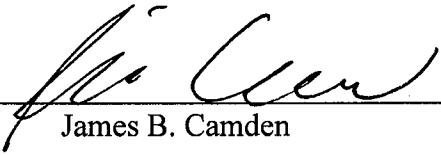
I also certify that I served true and correct copies of the foregoing Respondent ProMedica Health System Inc.'s Motion to Set Hearing Location upon the following individuals by electronic mail on March 7, 2011:

Matthew J. Reilly  
Jeffrey H. Perry  
Sara Y. Razi  
Jeanne H. Liu  
Alexis J. Gilman  
Stephanie L. Reynolds  
Janelle L. Filson  
Maureen B. Howard

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sreynolds@ftc.gov

jfilson@ftc.gov  
mhoward@ftc.gov



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James B. Camden

**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

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

**RESPONDENT PROMEDICA HEALTH SYSTEM, INC.'S  
MOTION TO SET HEARING LOCATION**

**EXHIBIT A**

**In the Matter of ProMedica Health System, Inc., Respondent**  
**Docket No. 9346**

**COMPLAINT COUNSEL'S PRELIMINARY WITNESS LIST**

Complaint Counsel may call the following witnesses to testify on the matters identified below:

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Gary Akenberger	ProMedica Health System 1801 Richard Road Toledo, OH 43606 419-469-3800	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Matt Bodenstedt	ProMedica Health System (same)	Competitive effects of joinder, joinder discussions, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Lee William Hammerling	ProMedica Health System	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Kathleen Hanley	ProMedica Health System	Competitive effects of joinder, joinder discussions, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Andy Hoehn	ProMedica Health System	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Lori Johnston	ProMedica Health System	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Jeffrey Kuhn	ProMedica Health System	Competitive effects of joinder, joinder discussions, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Steve Marcus	ProMedica Health System	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Jeff Martin	ProMedica Health System	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
John Meier	ProMedica Health System	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Steve Mooney	ProMedica Health System	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Randall Oostra	ProMedica Health System	Competitive effects of joinder, joinder discussions, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Susan Payden	ProMedica Health System	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Larry Peterson	ProMedica Health System	Competitive effects of joinder, joinder discussions, market definition, efficiencies, quality, financial condition of St. Luke's
John Randolph	ProMedica Health System	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Alan Sattler	ProMedica Health System	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Barbara Steele	ProMedica Health System	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Ronald Wachsmann	ProMedica Health System	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Debra Ball	St. Luke's Hospital 5901 Monclova Road Maumee, OH 43537 419-893-5911	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
James Black	St. Luke's Hospital (same)	Competitive effects of joinder, joinder discussions, market definition, efficiencies, quality, financial condition of St. Luke's
Wendy Cedoz	St. Luke's Hospital	Competitive effects of joinder, joinder discussions, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's, alternative purchasers
Douglas Deacon	St. Luke's Hospital	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
David Dewey	St. Luke's Hospital	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Cindy Grube	St. Luke's Hospital	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Karon Henry	St. Luke's Hospital	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Charlie Kanthak	St. Luke's Hospital	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Theresa Konwinski	St. Luke's Hospital	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Jennifer Kuhn	St. Luke's Hospital	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Barbara Machin	St. Luke's Hospital	Competitive effects of joinder, joinder discussions, market definition, efficiencies, quality, financial condition of St. Luke's
Eric Perron	St. Luke's Hospital	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Cheryl Roush	St. Luke's Hospital	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Scott Rupley	St. Luke's Hospital	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Becky Taylor	St. Luke's Hospital	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Camille Thomas	St. Luke's Hospital	Competitive effects of joinder, market definition, efficiencies, quality, financial condition of St. Luke's
Dennis Wagner	St. Luke's Hospital	Competitive effects of joinder, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's
Daniel Wakeman	St. Luke's Hospital	Competitive effects of joinder, joinder discussions, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's, alternative purchasers
William Ammann	formerly with OhioCare Health System Board of Directors/St. Luke's	Competitive effects of joinder, joinder discussions, market definition, efficiencies, quality, financial condition of St. Luke's
Greg Radzialowski	Aetna, Inc. c/o Tony Dennis, Esq. 151 Farmington Avenue Hartford, CT 06156 860-273-5668	Competitive effects of joinder, market definition, member travel patterns for hospital usage, hospital/health plan contract negotiations, barriers to entry, efficiencies, quality
Bruce Gordon	AMBAC One State Street Plaza New York, NY 10004 212-668-0340	Financial condition of St. Luke's
Anthony Firmstone	Anthem/Wellpoint Inc. Wellpoint Inc. c/o Kathy Mayberry, Esq. 120 Monument Circle Indianapolis, IN 46204 317-488-6102	Competitive effects of joinder, market definition, member travel patterns for hospital usage, hospital/health plan contract negotiations, barriers to entry, efficiencies, quality
James Pugliese	Anthem/Wellpoint Inc. (same)	Competitive effects of joinder, market definition, member travel patterns for hospital usage, hospital/health plan contract negotiations, barriers to entry, efficiencies, quality



<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Robert Kolodgy	Blue Cross Blue Shield Association Headquarters - Chicago 225 North Michigan Avenue Chicago, IL 60601 312-297-6000	Competitive effects of joinder, market definition, efficiencies, quality
Doug Darland	Blue Cross Blue Shield Michigan c/o D. Bruce Hoffman, Esq. Hunton & Williams LLP 1900 K Street, NW Washington DC 20006 202-955-1619	Competitive effects, hospital/health plan contract negotiations, efficiencies, quality
Kent Buehrer	Buehrer Group Architecture 314 Conant Street Maumee, OH 43537 419-893-9021	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Donna Jablonski	Catholic Health Partners c/o Christopher Gordon, Esq. Squire, Sanders & Dempsey L.L.P. 1201 Pennsylvania Avenue, NW Suite 500 Washington, DC 20004 202-626-6284	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Kathleen Neal	Chrysler Group LLC c/o Christopher J. Pardi, Esq. 1000 Chrysler Drive CIMS 485-13-32 Auburn Hills, MI 48326 248-512-3982	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Nancy Mullins	CIGNA c/o Brian K. Grube, Esq. Jones Day North Point 901 Lakeside Avenue Cleveland, OH 44114 216-586-3939	Competitive effects of joinder, market definition, member travel patterns for hospital usage, hospital/health plan contract negotiations, barriers to entry, efficiencies, quality

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Dave Barabash	The Collaborative Inc. 500 Madison Avenue Toledo, OH 43604 419-242-7405	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Thomas Andreshak, M.D.	Consulting Orthopaedic Associates 7640 West Sylvania Suite B Sylvania, OH 43560 419-517-7500	Competitive effects of joinder, market definition, patient preference for hospital choice, efficiencies, quality
Deborah Waldie	Crum Manufacturing, Inc. 1265 Waterville Monclova Road Waterville, OH 43566 419-878-9779	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
David Oppenlander	Decatur Memorial Hospital 2300 N. Edward Street Decatur, IL 62526 217-876-8121	Competitive effects of joinder, joinder discussions, market definition, hospital/health plan contract negotiations, efficiencies, quality, financial condition of St. Luke's, alternative purchasers
John Lauffer	Electro Prime Group LLC 4510 Lint Avenue Suite B Toledo, OH 43612 419-476-0100	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Findley Davies	Findley Davies One SeaGate Suite 2050 Toledo, OH 43604 419-327-4133	Financial condition of St. Luke's
Susan Szymanski	FrontPath Health Coalition c/o John J. McHugh, III, Esq. McHugh & McCarthy, Ltd. 5580 Monroe Street Sylvania, OH 43560 419-885-3597	Competitive effects of joinder, market definition, member travel patterns for hospital usage, hospital/health plan contract negotiations, barriers to entry, efficiencies, quality

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
E. Dean Beck	Fulton County Health Center c/o Gary Sommer, Esq. Heban, Sommer & Murphree, LLC 200 Dixie Highway Rossford, OH 43460 419-662-3100	Competitive effects of joinder, market definition, geographic contours of hospital competition, hospital/health plan contract negotiations, barriers to entry, likelihood of future entry, efficiencies, quality,
Ron Palmer	Grand Valley Health Plan c/o Martha Forman, Esq. 829 Forest Hill Avenue, SE Grand Rapids, MI 49546 616-949-2410	Competitive effects, hospital/health plan contract negotiations, efficiencies, quality
Peggy Hartbarger	Hand In Hand Child Care 1315 Michigan Avenue Maumee, OH 43537 419-893-0623	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Thomas McGinty	Humana Inc. c/o Helen Thompson 500 West Main Street Louisville, KY 40202 502-580-4220	Competitive effects of joinder, market definition, member travel patterns for hospital usage, hospital/health plan contract negotiations, barriers to entry, efficiencies, quality
Anson Schultz	Innovative Controls Corporation 1354 East Broadway Street Toledo, OH 43605 419-691-6684	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Donna Jensen, D.O.	3230 Central Park West Drive Suite 112 Toledo, OH 43617 419-843-4283	Competitive effects of joinder, market definition, patient preference for hospital choice, efficiencies, quality
Craig Huffman	Lakeside Interior Contractors 26970 Eckel Road Perrysburg, OH 43551 419-867-1300	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Marrienne Capiello	Louisville Title 626 Madison Avenue Toledo, OH 43604 419-248-4611	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Kleia Luckner	Retired Hospital Administrator, Nurse and Midwife 3452 Kenwood Boulevard Toledo, OH 43606 419-531-8217	Competitive effects of joinder, market definition, patient preference for hospital choice, quality
Rachel Gregg	The Mannik & Smith Group, Inc. 1800 Indian Wood Circle Maumee, OH 43537 419-891-2222	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Christopher Marlowe, M.D.	3715 Airport Highway Suite F Toledo, OH 43615 419-389-0492	Competitive effects of joinder, market definition, patient preference for hospital choice, efficiencies, quality
Jim Perry	Master Chemical Corporation 501 West Boundary Street Perrysburg, OH 43551 419-874-7902	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Mitchell Greenbaum, D.O.	Maumee Bay Obstetrics and Gynecology 2702 Navarre Avenue Suite 305 Oregon, OH 43616 419-691-8000	Competitive effects of joinder, market definition, patient preference for hospital choice, efficiencies, quality
Craig Kohring	MDA Engineering, Inc. 1415 Holland Road Maumee, OH 43537 419-893-3141	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
MedAssets	MedAssets 5556 Tennyson Parkway Suite 200 Plano, TX 75024 972-202-5059	Authenticate data
Donald Pirc	Medical Mutual of Ohio c/o Jeremy Dutra, Esq. Squire, Sanders & Dempsey L.L.P. 1201 Pennsylvania Avenue, NW Suite 500 Washington, DC 20004 202-626-6237	Competitive effects of joinder, market definition, member travel patterns for hospital usage, hospital/health plan contract negotiations, barriers to entry, efficiencies, quality
Scott Shook	Mercy Health Partners c/o Christopher Gordon, Esq. Squire, Sanders & Dempsey L.L.P. 1201 Pennsylvania Avenue, NW Suite 500 Washington, DC 20004 202-626-6284	Competitive effects of joinder, market definition, geographic contours of hospital competition, hospital/health plan contract negotiations, barriers to entry, likelihood of future entry, efficiencies, quality, alternative purchasers
Tom Weinrich	Metal Forming and Coining Corporation 1007 Illinois Avenue Maumee, OH 43537 419-893-8748	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Michigan Health & Hospital Association Service Corporation	Michigan Health & Hospital Association Service Corporation c/o Amy Barkholz, Esq. 6215 West St. Joseph Highway Lansing, MI 48917-4852 517-886-8224	Authenticate data
Navigant Consulting	Navigant Consulting 1801 K Street NW Suite 500 Washington, DC 20006 202-973-4590	Competitive effects of joinder, efficiencies, quality
Charles Gbur, M.D.	Ohio Heart & Vascular Consultants 5705 Monclova Road Suite 201 Maumee, OH 43537 419-794-7700	Competitive effects of joinder, market definition, patient preference for hospital choice, efficiencies, quality

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Ohio Hospital Association	Ohio Hospital Association c/o Mary L. Gallagher, Esq. 155 East Broad Street Floor 15 Columbus, OH 43215-3620 614-221-7614	Authenticate data
Carrie Herringshaw	Penta Career Center 9301 Buck Road Perrysburg, OH 43551 419-666-1120	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Salvador Peron, M.D.	3436 Granite Circle Toledo, OH 43617 419-861-4952	Competitive effects of joinder, market definition, patient preference for hospital choice, efficiencies, quality
Jeffrey Wirebaugh, M.D.	Perrysburg Family Physicians, LLC 702 Commerce Drive Suite 160 Perrysburg, OH 43551 419-872-7600	Competitive effects of joinder, market definition, patient preference for hospital choice, efficiencies, quality
Aura Norris	Perrysburg Schools 140 East Indiana Avenue Perrysburg, OH 43551 419-874-9131	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Mark Nowak	Pugh Heating & Air Conditioning 6400 Hamilton Drive East Holland, OH 43528 419-867-9955	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Margaret Kaya	Sunshine Inc. of NW Ohio 7223 Maumee Western Road Maumee, OH 43537 419-794-1397	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Edmund Jung	Towers Watson c/o Paul A. Meyer, Esq. 901 N. Glebe Road Arlington, VA 22203 703-258-7564	Financial condition of St. Luke's
Ken Lortz	UAW (Region 2B) 1691 Woodlands Drive Maumee, OH 43537 419-893-4677	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees
Gretchen Kline	United Healthcare c/o Steven Netishen, Esq. 5901 Lincoln Drive Edina, MN 55436 952-992-5577	Competitive effects, hospital/health plan contract negotiations, efficiencies, quality
Gina Sheridan	United Healthcare (same)	Competitive effects of joinder, market definition, member travel patterns for hospital usage, hospital/health plan contract negotiations, barriers to entry, efficiencies, quality
Jeffrey Gold, M.D.	University of Toledo Medical Center c/o Lauri Cooper, Esq. University of Toledo Office of Legal Affairs Health Science Campus 3000 Arlington Avenue Toledo, OH 43614 419-383-4577	Competitive effects of joinder, market definition, geographic contours of hospital competition, hospital/health plan contract negotiations, barriers to entry, likelihood of future entry, efficiencies, quality, alternative purchasers
Stanley Korducki	Wood County Hospital c/o Ed Matto, Esq. Steptoe & Johnson PLLC Huntington Center 41 South High Street, Suite 2200 Columbus, OH 43215 614-458-9889	Competitive effects of joinder, market definition, geographic contours of hospital competition, hospital/health plan contract negotiations, barriers to entry, likelihood of future entry, efficiencies, quality

<i>Name</i>	<i>Affiliation/Contact Information</i>	<i>Description of Proposed Testimony</i>
Hugh Caumartin	Wood County Schools Consortium Bowling Green City Schools 140 South Grove Street Bowling Green, OH 43402 419-353-6291	Competitive effects of joinder, market definition, quality, the viability/attractiveness of various health plan networks in Lucas County, impact of higher healthcare costs on employers and employees

In addition, Complaint Counsel reserves the right to call any witness on Respondent's witness list, and any witness identified during the course of discovery in this matter.



**UNITED STATES OF AMERICA  
BEFORE FEDERAL TRADE COMMISSION**

\_\_\_\_\_  
In the Matter of )  
 )  
 )  
PROMEDICA HEALTH SYSTEM, INC. )  
 )  
a corporation. )  
\_\_\_\_\_ )

Docket No. 9346  
**PUBLIC**

**RESPONDENT PROMEDICA HEALTH SYSTEM, INC.'S  
MOTION TO SET HEARING LOCATION**

**EXHIBIT B**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

_____	)	
<b>U.S. FEDERAL TRADE COMMISSION</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
v.	)	<b>Civil Action No. 10-mc-0586 (RMC)</b>
	)	
<b>PROMEDICA HEALTH SYSTEM,</b>	)	
<b>INC., <i>et al.</i></b>	)	
	)	
<b>Respondents.</b>	)	
_____	)	

**ORDER**

Respondents ProMedica Health System, Inc., Paramount Health Care, and St. Luke's Hospital, all of the Toledo, Ohio metropolitan area, seek to consummate the merger of St. Luke's Hospital into ProMedica's hospital system. The Federal Trade Commission fears an anti-competitive effect and has issued subpoenas *duces tecum* and civil investigative demands ("CIDs") to the Respondents. When responses to its demands were slow or non-existent, the FTC sought to enforce its subpoenas and CIDs in this Court in the District of Columbia under Section 9 of the FTC Act, 15 U.S.C. § 49. Respondents argue that this Court lacks subject-matter jurisdiction over this enforcement action pursuant to *NLRB v. Cooper Tire & Rubber Co.*, 438 F.3d 1198 (D.C. Cir. 2006), as the subject matter of the FTC's investigation lies in Ohio.

At a hearing on the FTC's Emergency Petition for an Order Enforcing Subpoena Duces Tecum and Civil Investigation Demands Issued in a Merger Investigation, [Dkt. # 1], held on October 8, 2010, the Court heard argument from the parties and indicated its intent to issue the requested order. At the hearing, FTC argued that *Cooper Tire* supports the Court's jurisdiction as

the D.C. Circuit recognized that where, among other factors, an agency investigation is “nationwide,” the proper judicial district for an enforcement action may be the District of Columbia. *See Cooper Tire*, 438 F.3d at 1202–03. The Court agreed with the FTC and based its ruling on its representations that the investigation involved the collection of data from commercial health plans “in Connecticut, Indiana, Kentucky, Michigan, Minnesota, and New York.” Pet’r’s Reply in Support of Emergency Pet. [Dkt. # 8], Supplemental Decl. of Jeanne Liu [Ex. A] ¶ 6. Based on the scope of the investigation, the Court determined that it spanned several states and was quasi-national and, thus, not cabined by the analysis in *Cooper Tire*. The Court did not issue the order, however, because Respondents sought leave to file a reply — which the Court will deem a surreply — which they did on October 11, 2010 (the Columbus Day holiday), and which the Court has now reviewed.

The Court has reconsidered its decision announced at the hearing and now concludes that it lacks jurisdiction to enforce the FTC’s subpoenas and CIDs.<sup>1</sup> The Court must apply a two-part test to determine “the location of an investigative inquiry for purposes of district court jurisdiction to enforce agency subpoenas: ‘(1) whether [the location bears] a sufficiently reasonable relation to the subject matter of the investigation . . . , and (2) whether the agency’s choice of this [location for enforcement] . . . exceeds the bound of reasonableness.’” *Cooper Tire*, 438 F.3d at 1201 (quoting *FEC v. Comm. to Elect Lyndon La Rouche*, 613 F.2d 849, 856–57 (D.C. Cir. 1979)). Mirroring the NLRB’s unsuccessful arguments in *Cooper Tire*, *see id.* at 1202, the FTC first argued at the hearing that its inquiry is being carried on within the District of Columbia as the FTC has spearheaded the

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<sup>1</sup> As Petitioner moved the Court to exert supplemental jurisdiction over the CID enforcement action, *see* Pet’r’s Emergency Pet. [Dkt. # 1], Mem. in Support of Emergency Pet. [Ex. 2] 3, the Court lacks jurisdiction over the CID enforcement action since it lacks jurisdiction over the subpoena enforcement action.

investigation from its headquarters in D.C., it issued the subpoenas and CIDs from D.C., the compulsory process was returnable to D.C., and testimony was taken in D.C. While this Court's exercise of jurisdiction would no doubt convenience the FTC, *Cooper Tire* clearly underscored that the critical question in determining whether a court has jurisdiction is the relationship between the jurisdiction and the subject-matter of the investigation. *See id.* The subject-matter of this investigation is undeniably in Ohio, not within the District of Columbia. It cannot be said that the FTC can avoid the import of *Cooper Tire* "in any health care-related inquiry" just because the agency seeks information from various states. Pet'r's Reply in Support of Emergency Pet. [Dkt. # 8], Supplemental Declaration of Jeanne Liu [Ex. A] ¶ 6. In this case, the three entities involved are all in the Toledo, Ohio, area.<sup>2</sup> The subject matter of the investigation concerns these three Respondents and not any entity elsewhere. This differs starkly from the nationwide investigation in *La Rouche*, which focused on the potential improprieties of a national political party, engaged in a national election, with a record of donations from twenty states. *See Cooper Tire*, 438 F.3d at 1202–03. The Court is, of course, bound by *Cooper Tire*, which the Court finds applies to these facts.

As the Court lacks jurisdiction, the Court declines to order compliance with the FTC's subpoenas *duces tecum* and CIDs. Inasmuch as the parties might have anticipated an order enforcing the subpoenas and CIDs, the Court has hastened to issue this order declining to do so.

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<sup>2</sup> Petitioner acknowledges, at a minimum, that any anti-competitive effects would be felt primarily, if not exclusively, in the Toledo, Ohio area. *See* Pet'r's Emergency Pet. [Dkt. # 1], Mem. in Support of Emergency Pet. [Ex. 2] 2 ("This case involves the consolidation of two general acute-care hospital systems in the Toledo area. . . The transaction may substantially lessen competition in the market for general acute-care inpatient hospital services and other medical services, such as obstetrics. The [FTC] is conducting an investigation to determine whether the transaction violates the antitrust laws and would result in higher rates for health plans, as well as increased insurance premiums and greater out-of-pocket expenses for consumers in the Toledo area.").

