ORIGINAL

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

ProMedica Health System, Inc.
a corporation.

Docket No. 9346
PUBLIC

COMPLAINT COUNSEL'S AND RESPONDENT'S JOINT STIPULATIONS OF LAW AND FACT

In accordance with the Scheduling Order in this proceeding, Complaint Counsel and Respondent ProMedica Health System, Inc. ("ProMedica") stipulate as follows:

1. General acute care inpatient services do not include outpatient services.

2. Outpatient services are services that do not require an overnight stay in the hospital.

3. General acute care inpatient services sold to commercial health plans constitutes a valid relevant service market for purposes of analyzing the likely competitive effects of the Acquisition.

4. ProMedica Health System's ("ProMedica") Lucas County hospitals offer general acute care inpatient services.

5. St. Luke's Hospital ("St. Luke's") offers general acute care inpatient services.

6. St. Luke's currently performs few, if any, tertiary services and no quaternary services.

7. Inpatient obstetric services includes services such as obstetrics, newborn, neonatology, and gynecology services.

8. Mercy and UTMC offer general acute care inpatient services.

9. Within Lucas County, the two remaining competitors to ProMedica for general acute care

services after the Acquisition are Mercy and UTMC.

10. In at least the last ten years, no commercial health plan has offered a product with a hospital network consisting only of UTMC and Mercy.

11. Building a new Lucas County hospital with 300 or more licensed beds would cost millions of dollars, even for an entity that already owns the land upon which to build a hospital.

12. Hospitals in Lucas County compete on the basis of clinical quality, amenities, cost, location, visibility, physician location, and patient experience, among others, to attract patients.

13. ProMedica seeks to have its hospitals included in a commercial health plan's network if the reimbursement rate, number of covered lives, and other terms of the proposed contract are mutually acceptable to ProMedica and the health plan.

14. A commercial health plan's bargaining position in negotiations with hospitals or hospital systems is based, in part, on the patient volume the health plan can offer to a hospital or hospital system.

15. Some of the business decisions made on behalf of Paramount or ProMedica hospitals may have an impact on the other, and if a business decision was to have such an impact, an evaluation of that impact may be performed.

16. ProMedica's Board of Directors has never advised ProMedica on proposed or target reimbursement rates to seek from commercial health plans.

17. Since the Acquisition, ProMedica has negotiated with health plans for general acute care services performed at St. Luke's.

18. Both before and after the Acquisition, ProMedica's market share is higher than its

competitors in Lucas County, whether calculated by registered beds, beds-in-use, or occupancy.

19. Within the last five years, ProMedica had a contract with Anthem that explicitly offered discounted rates conditional on Anthem's agreement not to include St. Luke's in Anthem's provider network.

20. Prior to the Acquisition, St. Luke's considered ProMedica, Mercy, and UTMC to be competitors.

21. Prior to the Acquisition, ProMedica considered St. Luke's a competitor for general acute care services and obstetric services.

22. At the time of the Acquisition, St. Luke's was not a "failing firm" as defined under the Horizontal Merger Guidelines and U.S. Supreme Court precedent.

23. St. Luke's has not missed a payment on its Series 2004 bonds to the City of Maumee.

24. St. Luke's has not been late on a payment on its Series 2004 bonds to the City of Maumee.

25. As of August 31, 2010, St. Luke's had enough cash and investments on its financial statement to pay off all of its outstanding debt.

26. By September 1, 2012, ProMedica will have the right to approve two-thirds of the members of St. Luke's Board of Directors.

27. ProMedica is the largest employer of physicians in Lucas County.

28. St. Luke's Earnings Before Interest, Taxes, Depreciation, and Amortization ("EBITDA") for the time period January 1, 2010 through August 31, 2010 were an improvement over St. Luke's EBITDA for calendar year 2009.

29. St. Luke's operating cash flow margin for the time period January 1, 2010 through

August 31, 2010 was an improvement over St. Luke's operating cash flow margin for calendar year 2009.

30. St. Luke's operating income for the time period January 1, 2010 through August 31, 2010 was an improvement over St. Luke's operating income for calendar year 2009.

31. St. Luke's operating margin for the time period January 1, 2010 through August 31, 2010 was an improvement over St. Luke's operating margin for calendar year 2009.

32. St. Luke's outpatient net revenues increased in each calendar year from 2008 through 2010.

33. St. Luke's inpatient net revenues increased in each calendar year from 2008 through 2010.

34. St. Luke's owed less than $11 million in total bond debt as of August 31, 2010.

35. As of August 31, 2010, St. Luke's held a total of at least $65 million in cash and investment balances.

36. As of December 31, 2010, St. Luke's held a total of at least $70 million in cash and investment balances.

37. From December 31, 2009 through August 31, 2010, the fair market value of St. Luke's "assets limited as to use" increased as the result of positive performance in financial markets and stock markets.

38. St. Luke's did not attempt to issue new bond debt in 2009.

39. St. Luke's did not attempt to issue new bond debt any time between January 1, 2010 and August 31, 2010.

40. Dan Wakeman, St. Luke's CEO, initiated a three-year plan in 2008 that contained growth goals for St. Luke's patient revenues and patient volume.

41. Prior to August 31, 2010, St. Luke's attained the net inpatient revenue growth target contained in the three-year plan that St. Luke's initiated in 2008.

42. Prior to August 31, 2010, St. Luke's attained the net outpatient revenue growth target contained in the three-year plan that St. Luke's initiated in 2008.

43. One of St. Luke's rationales for acquiring physician practices was the expectation that the physicians would generate inpatient and outpatient revenues at St. Luke's.

44. St. Luke's made at least $7 million of capital expenditures in calendar year 2009.

45. St. Luke's hired additional full-time employees during calendar year 2009.

46. St. Luke's hired additional full-time employees during calendar year 2010.

47. St. Luke's was not an in-network provider with Paramount from 2001 through August 31, 2010.

48. Since January 1, 2007, the construction of a new bed tower at Flower Hospital has not appeared on any capital budget approved by the ProMedica Board of Trustees.

49. The construction of a new bed tower at Flower Hospital did not appear on ProMedica's 2010-2012 Strategic Plan.

50. The construction of a new general acute care hospital at the Arrowhead property did not appear on ProMedica's 2010-2012 Strategic Plan.

51. On August 31, 2010, St. Luke's and ProMedica were both self-insured against professional liabilities.

52. In 2009, UTMC executives expressed to St. Luke's executives an interest in pursuing an affiliation with St. Luke's.

53. This is a civil action arising under Acts of Congress protecting trade and commerce against restraints and monopolies, and is brought by an agency of the United States

authorized by an Act of Congress to bring this action.

54. ProMedica, including its relevant operating subsidiaries, is, and at all relevant times has been, engaged in activities in or affecting "commerce" as defined in Section 4 of the FTC Act, 15 U.S.C. § 44 (2006), and Section 1 of the Clayton Act, 15 U.S.C. § 12 (2006).

55. The Federal Trade Commission ("FTC") is an administrative agency of the U.S. Government established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41 *et seq*. (2006). The FTC is vested with authority and responsibility for enforcing, *inter alia*, Section 7 of the Clayton Act, 15 U.S.C. § 18.

56. Section 7 of the Clayton Act, as amended, bars acquisitions "where in any line of commerce or in any activity affecting commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." 15 U.S.C. § 18 (2006).

57. The purpose of the antitrust laws is to protect competition, not competitors. *Brown Shoe*, 370 U.S. at 320.

58. The inpatient services included in the cluster market are not substitutes for one another (*i.e.*, appendectomies and knee surgery are not interchangeable). However, the cluster market is used "as a matter of analytical convenience [because] there is no need to define separate markets for a large number of individual hospital services . . . when market shares and entry conditions are similar for each." *Emigra Group v. Fragomen*, 612 F. Supp. 2d 330, 353 (S.D.N.Y. 2009) (citing Jonathan B. Baker, *Market Definition: An Analytical Overview*, 74 ANTITRUST L.J. 129, 157-59 (2007)).

59. Section 7 of the Clayton Act prohibits acquisitions that are likely to lessen competition in "any section of the country," otherwise known as a geographic market. *Phila. Nat'l*

Bank, 374 U.S. at 356.

60. A "flailing firm," is defined as being so compromised that its future competitive significance is overstated by current market shares. See *United States v. Gen. Dynamics Corp.*, 415 U.S. 486, 506-08 (1974); *FTC v. Arch Coal, Inc.*, 329 F. Supp. 2d 109, 153 (D.D.C. 2004).

Respectfully submitted,

Dated: May 25, 2011

___/s_Matthew J. Reilly__________

Matthew J. Reilly, Esq.
Jeffrey H. Perry, Esq.
Sara Y. Razi, Esq.
Jeanne H. Liu, Esq.
Stephanie L. Reynolds, Esq.
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: 202-326-2350
mreilly@ftc.gov

Complaint Counsel

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2011, I caused copies of Complaint Counsel's and Respondent's Joint Stipulations of Law and Fact to be served on the following:

One electronic copy via email to:

David Marx, Jr.
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, IL 60606
312-372-2000
dmarx@mwe.com

Stephen Y. Wu
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, IL 60606
312-372-2000
swu@mwe.com

Erin C. Arnold
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, IL 60606
312-372-2000
earnold@mwe.com

Amy J. Carletti
McDermott Will & Emery LLP
227 W. Monroe Street
Chicago, IL 60606
312-372-2000
acarletti@mwe.com

Amy Hancock
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
ahancock@mwe.com

Jennifer L. Westbrook
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
jwestbrook@mwe.com

Vincent C. van Panhuys
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
vvanpanhuys@mwe.com

Carrie Amezcua
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
camezcua@mwe.com

Christine G. Devlin
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
cdevlin@mwe.com

Daniel Powers
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
dgpowers@mwe.com

James Camden
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
jcamden@mwe.com

Pamela A. Davis
Antitrust Specialist
McDermott Will & Emery LLP
600 13th Street, NW
Washington, DC 20005
202-756-8000
pdavis@mwe.com

s/ Jeanne H. Liu___________

Jeanne H. Liu
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Telephone: 202-326-3572
jliu@ftc.gov