

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

COMMISSIONERS: **Lina Khan, Chair**
 Noah Joshua Phillips
 Rebecca Kelly Slaughter
 Christine S. Wilson

In the Matter of

Hackensack Meridian Health, Inc.,

and

Englewood Healthcare Foundation.

Docket No. 9399

**RESPONDENTS' OPPOSITION TO COMPLAINT COUNSEL'S EMERGENCY
MOTION FOR A 60-DAY CONTINUANCE OF ADMINISTRATIVE PROCEEDINGS &
ITS MOTION TO WITHDRAW THE MATTER FROM ADJUDICATION**

Respondents Hackensack Meridian Health, Inc. ("HMH") and Englewood Healthcare Foundation ("Englewood") respectfully oppose both Complaint Counsel's Emergency Motion for a 60-Day Continuance of Administrative Proceedings and its Motion to Withdraw the Matter from Adjudication, both filed on April 5, 2022. For the reasons set forth in more detail in Respondents' Motion to Dismiss Complaint filed on April 5, 2022, Respondents believe the appropriate course of action is the dismissal of this administrative proceeding. Respondents have jointly agreed to terminate their merger agreement, withdrawn their HSR filings, and abandoned the proposed transaction following decisions from the U.S. District Court for the District of New Jersey and the U.S. Third Circuit Court of Appeals granting and affirming the Federal Trade Commission's ("FTC") request for a preliminary injunction pending an administrative trial on the merits. The transaction that is the subject of the Administrative Complaint, therefore, will

never be consummated. Accordingly, dismissal of the Administrative Complaint as moot, rather than withdrawal of the matter from adjudication, is the appropriate relief.

In both its Motions, Complaint Counsel asserts that continued delay—and not dismissal—of the administrative proceeding is necessary to allow the Commission to evaluate “whether further relief is warranted based on the facts of this specific case.” But neither Motion articulates what “further relief” is appropriate or necessary here, nor under what basis or legal standard the Commission could obtain that relief absent a full trial on the merits. Further, nor is it clear what discussions will occur if the matter is withdrawn that will change the current reality before the Commission: The relief sought has been obtained—the proposed transaction has been abandoned and will never occur. Accordingly, full dismissal, not more delay, is appropriate.

The only additional relief mentioned in discussions with Complaint Counsel was a notice requirement for future mergers in the relevant market. However, as explained in Respondents’ Motion to Dismiss, such relief is already available to the FTC under the HSR Act, given the size of those who provide services in the relevant market. Any additional notice requirement would require a trial on the merits—over a transaction that has now been terminated—which would involve a tremendous expenditure of resources by the parties and third parties and would not be in the public interest. The Commission has previously dismissed administrative complaints—not merely withdrawn them—at least four times since December 2020, with similar requests for relief, after the parties abandoned their transaction and withdrew their HSR filings. *See* Respondents’ Motion to Dismiss Complaint at 4. The Commission should not depart from that practice here.

Finally, Complaint Counsel claims it is driven to seek a 60-day continuance out of concern for the burdens on third parties, Complaint Counsel, and Respondents that would be

caused by the current schedule in the administrative proceeding. Respondents also wish to avoid the unnecessary burdens that would be imposed on all parties for an administrative hearing that may not proceed, particularly for witnesses from third parties and Respondents who are involved in the healthcare industry during a global pandemic. To the extent the Commission needs additional time beyond April 22 to reach a decision on Respondents' Motion to Dismiss, Respondents do not object to a limited continuance for that purpose. Nonetheless, beyond such a limited continuance, the solution to these unnecessary burdens is dismissal, not more delay, which only postpones these substantial burdens for a later date concerning a transaction that will never occur.

CONCLUSION

For the reasons set forth above, Respondents respectfully request that the Commission deny Complaint Counsel's Motion for a 60-Day Continuance and its Motion to Withdraw the Matter from Adjudication, while granting Respondents' Motion to Dismiss the Complaint.

Dated: April 8, 2022

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposition was electronically filed using the FTC’s administrative e-filing system, causing the document to be served on the following registered participants:

The Honorable D. Michael Chappell
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I further certify that I have served via electronic mail a copy of the foregoing on the following:

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