Complaint

IN THE MATTER OF

CALIFORNIA ASSOCIATION OF LEGAL SUPPORT PROFESSIONALS

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4447; File No. 131 0205
Complaint, April 3, 2014 – Decision, April 3, 2014

This consent order addresses California Association of Legal Support Professionals' ("CALSPro") restraining through its Code of Ethics the ability of its members to compete on price, to solicit legal support professionals for employment, and to advertise. The complaint alleges that CALSPro restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act by adopting and maintaining provisions in its Code of Ethics that restrain its members from competing on price, advertising, and soliciting legal support professionals for employment. The consent order requires CALSPro to cease and desist from restricting its members from competing on price, advertising, and soliciting legal support professionals for employment.

Participants

For the *Commission*: *Armando Irizarry.*

For the *Respondent*: *Michael Belote*, *California Advocates, Inc.*

COMPLAINT

The Federal Trade Commission ("Commission"), pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et seq.*, and by virtue of the authority vested in it by said Act, having reason to believe that California Association of Legal Support Professionals ("Respondent" or "CALSPro"), a corporation, has violated and is violating the provisions of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint, stating its charges as follows:

RESPONDENT

1.Respondent California Association of Legal Support Professionals is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of California, with its office and principal place of business located at 2520 Venture Oaks Way, Suite 150, Sacramento, California 95833.

2.Respondent is a non-profit, professional association of over 350 company and individual members. Respondent's members are in the business of providing support services to the legal community, including but not limited to serving process, copying documents, filing documents with a court, preparing subpoenas, searching court records, locating persons, and conducting private investigations.

JURISDICTION

3.Respondent conducts business for the pecuniary benefit of its members and is therefore a "corporation," as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

4.The acts and practices of Respondent, including the acts and practices alleged herein, are in or affecting "commerce" as defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

NATURE OF THE CASE

5.Respondent maintains a Code of Ethics applicable to the commercial activities of its members. Respondent's members agree to abide by the Code of Ethics as a condition of membership.

6.Respondent has acted as a combination of its members, and in agreement with at least some of those members, to restrain competition by restricting through its Code of Ethics the ability of its members to compete on price, to solicit legal support

professionals for employment, and to advertise. Specifically, Respondent maintains the following provisions in its Code of Ethics:

- "It is not ethical to cut the rates you normally and customarily charge when soliciting business from a member firm's client . . ."

- "It is not ethical to . . . speak disparagingly of another member."

- "Never discuss the bad points of your competitor."

- "It is unethical to contact an employee of another member firm to offer him employment with your firm without first advising the member of your intent."

7.In furtherance of the combination alleged in Paragraph 6, Respondent established a Dispute Resolution Committee to uphold and maintain industry standards and ethical business practices as set forth in Respondent's Bylaws, Code of Ethics and Manual of Policies and Procedures. The Dispute Resolution Committee provides an avenue for resolving alleged violations of the Code of Ethics, including by encouraging Respondent's members to resolve privately disputes arising out of the Code of Ethics, and also by establishing a mechanism by which Respondent may sanction violations of the Code of Ethics.

VIOLATION CHARGED

8.The purpose, effect, tendency, or capacity of the combination, agreement, acts and practices alleged in Paragraphs 6 and 7 has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among legal support professionals, and by depriving consumers and others of the benefits of free and open competition among legal support professionals.

9.The combination, agreement, acts and practices alleged in Paragraphs 6 and 7 constitute unfair methods of competition in

violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45. Such combination, agreement, acts and practices, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested herein.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this third day of April, 2014, issues its Complaint against Respondent.

By the Commission.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of California Association of Legal Support Professionals ("Respondent" or "CALSPro") and Respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

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

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in § 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order ("Order"):

1. Respondent California Association of Legal Support Professionals is a non-profit corporation organized, existing, and doing business under, and by virtue of, the laws of the State of California, with its office and principal place of business located at 2520 Venture Oaks Way, Suite 150, Sacramento, California 95833.

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

ORDER

I.

IT IS HEREBY ORDERED that, as used in this Order, the following definitions, shall apply:

A. "Respondent" or "CALSPro" means California Association of Legal Support Professionals, its directors, boards, officers, employees, agents, representatives, councils, committees, foundations, divisions, successors, and assigns.

B. "Antitrust Compliance Officer" means a person appointed under Paragraph IV.A. of this Order.

C. "Antitrust Counsel" means a lawyer admitted to practice law in one or more of the judicial districts of the courts of the United States.

D. "Antitrust Laws" means the Federal Trade Commission Act, as amended, 15 U.S.C. § 41 *et. seq.*, the Sherman Act, 15 U.S.C. § 1 *et. seq.*, and the Clayton Act, 15 U.S.C. § 12 *et. seq.*

E. "Code of Ethics" means a statement setting forth the principles, values, standards, or rules of behavior that guide the conduct of an organization and its members.

F. "FTC Settlement Statement" means the statement attached to this Order as Appendix A.

G. "Member" means a member of CALSPro, including company, individual, associate, and vendor members.

H. "Organization Documents" means any documents relating to the governance, management, or direction of Respondent, including, but not limited to, bylaws, rules, regulations, Codes of Ethics, policy statements, interpretations, commentaries, or guidelines.

I. "Regulating" means (1) adopting, maintaining, recommending, or encouraging that Members follow any rule, regulation, interpretation, ethical ruling, policy, commentary, or guideline; (2) taking or threatening to take formal or informal disciplinary action; or (3) conducting formal or informal investigations or inquiries.

II.

IT IS FURTHER ORDERED that Respondent, directly or indirectly, or through any corporate or other device, in or in connection with Respondent's activities as a professional association in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, do forthwith cease and desist from Regulating, restricting,

restraining, impeding, declaring unethical or unprofessional, interfering with or advising against:

A. Price competition by its Members, including, but not limited to, restraining Members from offering discounts when soliciting business;

B. Solicitation of employees by its Members, including, but not limited to, restraining Members from contacting employees unless they conform to any Code of Ethics, rule, or regulation established by Respondent; and

C. Advertising or publishing by Members of the prices, terms or conditions of sale of legal support services, including, but not limited to, restraining its Members from making statements about competitors' products, services, or business or commercial practices;

Provided, however, that nothing in this Paragraph II shall prohibit Respondent from adopting and enforcing reasonable principles, Codes of Ethics, rules, regulations, guidelines, or policies governing the conduct of its Members with respect to representations that Respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

III.

IT IS FURTHER ORDERED that:

A. No later than thirty (30) days from the date this Order is issued, Respondent shall:

1. Post and maintain for five years on the Code of Ethics page of CALSPro's website, the following items:

a. An announcement that states "CALSPro agreed to change its Code of Ethics and will not adopt, encourage its Members to follow, or enforce

any Code of Ethics provision relating to price competition, solicitation of employees, or advertising that does not comply with the FTC Consent Order,"

b. The FTC Settlement Statement; and

c. A link to the Federal Trade Commission's website that contains the press release issued by the Commission in this matter; and

2. Distribute electronically or by other means a copy of the FTC Settlement Statement to its board of directors, officers, employees, and Members.

B. No later than sixty (60) days from the date this Order is issued, Respondent shall:

1. Remove from CALSPro's Organization Documents and website any statement that is inconsistent with Paragraph II. of this Order; and

2. Publish on CALSPro's website any revisions of CALSPro's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement.

C. Respondent shall publish, in the font that is customarily used for feature articles:

1. Any revisions of CALSPro's Organization Documents, the press release issued by the Commission in this matter, and the FTC Settlement Statement in the next available edition of the "CALSPro Press" newsletter; and

2. The FTC Settlement Statement in the edition of the "CALSPro Press" newsletter, or any successor publication, on or as close as possible to the first and second anniversary dates of first publication of the FTC Settlement Statement.

D. For a period of five (5) years after this Order is issued, distribute electronically or by other means, a copy of the FTC Settlement Statement to each:

1. New Member no later than thirty (30) days after the date of commencement of the membership; and

2. Member who receives a membership renewal notice at the time the Member receives such notice.

E. Respondent shall maintain and make available to Commission staff for inspection and copying upon reasonable notice records adequate to describe in detail any:

1. Action against any Member taken in connection with the activities covered by Paragraph II. of this Order, including but not limited to enforcement, advisory opinions, advice or interpretations rendered; and

2. Complaint received from any person relating to Respondent's compliance with this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall design, maintain, and operate an antitrust compliance program to assure compliance with this Order and the Antitrust Laws:

A. No later than thirty (30) days from the date this Order is issued, Respondent shall appoint and retain an Antitrust Compliance Officer for the duration of this Order to supervise Respondent's antitrust compliance program.

B. For a period of three (3) years from the date this Order is issued, the Antitrust Compliance Officer shall be Michael Belote, Esq., after which a new Antitrust Compliance Officer may be appointed who shall be

Antitrust Counsel, a member of the Board of Directors, or an employee of Respondent.

C. For a period of five (5) years from the date this Order is issued, Respondent shall provide in-person annual training to its board of directors, officers, and employees concerning Respondent's obligations under this Order and an overview of the Antitrust Laws as they apply to Respondent's activities, behavior, and conduct.

D. Respondent shall implement policies and procedures to:

1. Enable persons (including, but not limited to, its board of directors, officers, employees, Members, and agents) to ask questions about, and report violations of, this Order and the Antitrust Laws, confidentially and without fear of retaliation of any kind; and

2. Discipline its board of directors, officers, employees, Members, and agents for failure to comply fully with this Order.

E. For a period of five (5) years from the date this Order is issued, Respondent shall conduct a presentation at each of its annual conferences that summarizes Respondent's obligations under this Order and provides context-appropriate guidance on compliance with the Antitrust Laws.

V.

IT IS FURTHER ORDERED that Respondent shall file a verified written report with the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with this Order:

A. No later than (i) ninety (90) days after the date this Order is issued, (ii) one hundred eighty (180) days after the date this Order is issued; and

B. No later than one (1) year after the date this Order is issued and annually thereafter for four (4) years on the anniversary of the date on which this Order is issued, and at such other times as the Commission staff may request.

VI.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed:

A. Dissolution of Respondent;

B. Acquisition, merger, or consolidation of Respondent; or

C. Any other change in Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of this Order.

VII.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days' notice to Respondent, Respondent shall without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities, and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession, or under the control, of the Respondent related to compliance with this Order, which copying services

shall be provided by the Respondent at its expense; and

B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

VIII.

IT IS FURTHER ORDERED that this Order shall terminate on April 3, 2034.

By the Commission.

APPENDIX A

(Letterhead of CALSPro)

Dear Member:

As you may know, the Federal Trade Commission conducted an investigation concerning the provisions in CALSPro's Code of Ethics that stated:

> It is not ethical to cut the rates you normally and customarily charge when soliciting business from a member firm's client, or to speak disparagingly of another member. . . . Never discuss the bad points of your competitor.
>
> It is unethical to contact an employee of another member firm to offer him employment with your firm without first advising the member of your intent.

The Federal Trade Commission alleges that these provisions violate the Federal Trade Commission Act because they, without

sufficient justification, restrain legal support professionals from competing for clients and employees, thereby depriving clients and employees of the benefits of competition among legal support professionals.

To end the investigation expeditiously and to avoid disruption to its core functions, CALSPro voluntarily agreed, without admitting any violation of the law, to the entry of a Consent Agreement and a Decision and Order by the Federal Trade Commission. As a result, CALSPro will not enforce, and will remove, the above provisions from its Code of Ethics.

More generally, the Federal Trade Commission has prohibited CALSPro from certain activities that restrain members from engaging in price competition, soliciting employees, and advertising. CALSPro may not restrain its members from offering discounts when soliciting business. CALSPro may not restrain its members from soliciting employees, including, but not limited to, restraining its members from contacting employees unless they conform to any Code of Ethics, rule, or regulation established by CALSPro. Finally, CALSPro may not restrain its members from advertising or publishing the prices, terms or conditions of sale of legal support products and services, including, but not limited to, restraining members from making statements about competitors' products, services, or business or commercial practices. However, CALSPro is not prohibited from adopting and enforcing reasonable principles, rules, guidelines, or policies governing the conduct of its members with respect to representations that CALSPro reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

The Decision and Order also requires that CALSPro implement an antitrust compliance program.

A copy of the Decision and Order is enclosed. It is also available on the Federal Trade Commission website at www.FTC.gov, and through the CALSPro web site.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Consent Agreement") from the California Association of Legal Support Professionals (hereinafter "CALSPro"). The Commission's complaint ("Complaint") alleges that CALSPro, acting as a combination of its members and in agreement with at least some of its members, restrained competition among its members and others in violation of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by adopting and maintaining provisions in its Code of Ethics that restrain its members from competing on price, advertising, and soliciting legal support professionals for employment.

Under the terms of the proposed Consent Agreement, CALSPro is required to cease and desist from restricting its members from competing on price, advertising, and soliciting legal support professionals for employment.

The Commission anticipates that the competitive issues described in the Complaint will be resolved by accepting the proposed order, subject to final approval, contained in the Consent Agreement. The proposed Consent Agreement has been placed on the public record for 30 days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After 30 days, the Commission will review the Consent Agreement again and the comments received, and will decide whether it should withdraw from the Consent Agreement or make final the accompanying Decision and Order ("the Proposed Order").

The purpose of this Analysis to Aid Public Comment is to invite and facilitate public comment. It is not intended to constitute an official interpretation of the proposed Consent Agreement and the accompanying Proposed Order or in any way to modify their terms.

The Consent Agreement is for settlement purposes only and does not constitute an admission by CALSPro that the law has

been violated as alleged in the Complaint or that the facts alleged in the Complaint, other than jurisdictional facts, are true.

I. The Complaint

The Complaint makes the following allegations.

A. The Respondent

CALSPro is a non-profit professional association of over 350 company and individual members. CALSPro's members are in the business of providing support services to the legal community, including but not limited to serving process, copying documents, filing documents with a court, preparing subpoenas, searching court records, locating persons, and conducting private investigations.

CALSPro maintains a Code of Ethics applicable to the commercial activities of its members. CALSPro's members agree to abide by the Code of Ethics as a condition of membership. CALSPro maintains the following provisions in its Code of Ethics:

- "It is not ethical to cut the rates you normally and customarily charge when soliciting business from a member firm's client ..."

- "It is not ethical to ... speak disparagingly of another member."

- "Never discuss the bad points of your competitor."

- "It is unethical to contact an employee of another member firm to offer him employment with your firm without first advising the member of your intent."

B. The Anticompetitive Conduct

The Complaint alleges that CALSPro has violated Section 5 of the Federal Trade Commission Act by restraining through its Code of Ethics the ability of its members to compete on price, to

solicit legal support professionals for employment, and to advertise. CALSPro also established a Dispute Resolution Committee to uphold and maintain industry standards and ethical business practices as set forth in Respondent's Bylaws, Code of Ethics and Manual of Policies and Procedures. The Dispute Resolution Committee provides an avenue for resolving alleged violations of the Code of Ethics, including by encouraging CALSPro's members to resolve privately disputes arising out of the Code of Ethics, and also by establishing a mechanism by which Respondent may sanction violations of the Code of Ethics.

The Complaint alleges that the purpose, effect, tendency, or capacity of the combination, agreement, acts and practices of CALSPro has been and is to restrain competition unreasonably and to injure consumers by discouraging and restricting competition among legal support professionals, and by depriving consumers and others of the benefits of free and open competition among legal support professionals.

II. The Proposed Order

The Proposed Order has the following substantive provisions. Paragraph II requires CALSPro to cease and desist from restraining its members from engaging in price competition, solicitation of employees, or advertising. The Proposed Order does not prohibit CALSPro from adopting and enforcing reasonable restraints with respect to representations that CALSPro reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act.

Paragraph III of the Proposed Order requires CALSPro to remove from its website and organization documents any statement inconsistent with the Proposed Order. CALSPro must publish an announcement that it has changed its Code of Ethics, and a statement describing the Consent Agreement ("the Settlement Statement"). CALSPro must distribute the Settlement Statement to CALSPro's board of directors, officers, employees, and members. Paragraph III also requires CALSPro to provide all new members and all members who receive a membership renewal notice with a copy of the Settlement Statement.

Statement of the Commission

Paragraph IV of the Proposed Order requires CALSPro to design, maintain, and operate an antitrust compliance program. CALSPro will have to appoint an Antitrust Compliance Officer for the duration of the Proposed Order. For a period of five years, CALSPro will have to provide in-person annual training to its board of directors, officers, and employees, and conduct a presentation at its annual conference that summarizes CALSPro's obligations under the Proposed Order and provides context-appropriate guidance on compliance with the antitrust laws. CALSPro must also implement policies and procedures to enable persons to ask questions about, and report violations of, the Proposed Order and the antitrust laws confidentially and without fear of retaliation, and to discipline its leaders, employees and agents for failure to comply with the Proposed Order.

Paragraphs V-VII of the Proposed Order impose certain standard reporting and compliance requirements on CALSPro.

The Proposed Order will expire in 20 years.

* * *

Statement of the Federal Trade Commission

The Federal Trade Commission is today issuing for public comment proposed consent orders with two professional associations, the Music Teachers National Association, Inc. ("MTNA") and California Association of Legal Support Professionals ("CALSPro").[1] We take this step because we have reason to believe that these professional associations and their

[1] Both MTNA and CALSPro are non-profits but it is well established that the Commission has jurisdiction over non-profit organizations that confer, or are organized for the purpose of conferring, economic benefits to their for-profit members. *See Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 767 n.6 (1999).

respective members have violated the antitrust laws by agreeing not to engage in fundamental forms of competitive activity.

MTNA, the umbrella organization for about 500 state and local music teacher associations across the country, is a professional association of over 20,000 private music teachers. Collectively, MTNA members generate an estimated $500 million in annual revenues. In 2004, MTNA revised its code of ethics and imposed a ban on solicitations, prohibiting teachers from actively recruiting students from one another. A number of MTNA affiliates have adopted even more aggressive competitive restrictions, including prohibitions on certain advertising, charging less than the community average, and offering scholarships or free music lessons. CALSPro, a California association of legal support service providers, is comprised of more than 350 company and individual members. CALSPro's code of ethics prohibits its members from offering discounted rates to rivals' clients, engaging in certain comparative advertising, and recruiting employees of competitors without first notifying the competitor.

Professional associations like MTNA and CALSPro typically serve many important and procompetitive functions, including adopting rules governing the conduct of their members that benefit competition and consumers. But, because trade organizations are by their nature collaborations among competitors, the Commission and courts have long been concerned with anticompetitive restraints imposed by such organizations under the guise of codes of ethical conduct.[2]

Competing for customers, cutting prices, and recruiting employees are hallmarks of vigorous competition. Agreements

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[2] *See, e.g.*, *Inst. of Store Planners*, 135 F.T.C. 793 (2003) (challenging restraints on price competition); *Nat'l Acad. of Arbitrators*, 135 F.T.C. 1 (2003) (restraints on solicitation and advertising); *Am. Inst. for Conservation of Historic & Artistic Works*, 134 F.T.C. 606 (2002) (restraints on price competition); *Cmty. Ass'ns Inst.*, 117 F.T.C. 787 (1994) (restraints on solicitation); *Nat'l Soc'y of Prof'l Eng'rs,* 116 F.T.C. 787 (1993) (restraints on advertising); *Nat'l Ass'n of Social Workers*, 116 F.T.C. 140 (1993) (restraints on solicitation and advertising); *Am. Psychological Ass'n*, 115 F.T.C. 993 (1992) (same).

among competitors not to engage in these activities injure consumers by increasing prices and reducing quality and choice. Absent a procompetitive justification, these types of restrictions on competition are precisely the kind of unreasonable restraints of trade that the Sherman Act was designed to combat. *See, e.g.*, *Nat'l Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679 (1978) (condemning ethics restriction on competitive bidding). For a professional association to proscribe honest competition as "unethical" behavior is particularly problematic because, as the Supreme Court has recognized, association members can be "expected to comply in order to assure that they [do] not discredit themselves by departing from professional norms." *Goldfarb v. Va. State Bar*, 421 U.S. 773, 792-93 (1975). Here, neither association advanced a legitimate business rationale for its restrictions. We therefore conclude that the principal tendency and likely effect of the challenged restraints is to harm consumers through higher prices, lower quality, and less choice.

Our proposed remedies will restore competition without imposing an undue burden on the parties or interfering with the legitimate functions of either organization. We have required MTNA and CALSPro to modify their codes of ethics and to cease any efforts to impede members of these associations from freely competing with one another. The MTNA order also requires the association to take affirmative steps to discourage anticompetitive conduct on the part of its state and local affiliates.

As with all of the Commission's enforcement activity, our goal in these cases is to stop the anticompetitive conduct at issue and remedy any anticompetitive effects associated with the challenged behavior. We also seek to provide guidance more broadly and deter other professional and trade organizations from imposing unjustified limits on competition. Maintaining a competitive marketplace requires that we monitor behavior among rivals and take action whenever we see competition being compromised to the detriment of consumers.

Complaint

IN THE MATTER OF

N.E.W. PLASTICS CORP.
D/B/A
RENEW PLASTICS

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket No. C-4449; File No. 132 3126
Complaint, April 3, 2014 – Decision, April 3, 2014

This consent order addresses N.E.W. Plastics Corp.'s green claims made while promoting two brands of plastic lumber products, Evolve and Trimax, to retailers, independent distributors and end-use consumers. The complaint alleges that Respondent falsely claimed (1) Evolve products as made from 90% or more recycled content; (2) Trimax products as made from mostly post-consumer recycled content; and (3) both Trimax and Evolve as recyclable. The complaint further alleges that Respondent did not possess or rely upon a reasonable basis to substantiate these representations. The consent order prohibits N.E.W. from making representations regarding the recycled content, the post-consumer recycled content, or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence.

Participants

For the *Commission*: *Robert Frisby* and *Elisa K. Jillson.*

For the *Respondent*: *Nelson W. Phillips III, Davis & Kuelthau, S.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that N.E.W. Plastics Corp., a corporation ("Respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent N.E.W. Plastics Corp., also doing business as Renew Plastics, is a Wisconsin corporation with its principal office or place of business at 112 Fourth Street, Luxemburg, Wisconsin 54217.

2. Respondent has manufactured, advertised, offered for sale, sold, and distributed Evolve plastic lumber products ("Evolve") and Trimax plastic lumber products ("Trimax") to independent distributors and retailers located throughout the United States. Respondent advertises Evolve and Trimax through promotional materials, including brochures, DVDs, and the websites http://www.renewplastics.com and http://www.trimaxbp.com. Respondent's distributors and retailers have disseminated, or have caused the dissemination of, the advertising claims in these promotional materials to end-use consumers. In addition, Respondent has directly disseminated the advertising claims in these promotional materials to end-use consumers through its websites.

3. The acts and practices of Respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

4. Since at least March 2011, Respondent has disseminated to independent distributors, retailers, or end-use consumers, or has caused to be disseminated to end-use consumers, the promotional materials referenced in Paragraph 2, including but not limited to the attached Exhibits A through E. These materials contain the following statements:

a. Renew Website (Exhibit A, excerpt from http://www.renewplastics.com)

"When you build with EVOLVE recycled plastic lumber, you demonstrate your commitment to the environment and sustainable living. EVOLVE recycled plastic lumber products are 100% plastic and generally contain over 90% recycled high density polyethylene (ReHDPE) material." (*Id*. at 1)

"[Evolve is] 100% recyclable[.]" (*Id*. at 1, 3)

"EVOLVE is a plastic composite material that consists of at least 90% recycled Type 2 High Density Polyethylene (HDPE) with the remainder of the

material being foaming agents and color with UV inhibitors." (*Id*. at 4)

"The composite mixture of the end product [EVOLVE lumber] is at least 90% ReHDPE, utilizing both post-consumer and post-industrial materials." (*Id.* at 7)

b. Trimax Website (Exhibit B, excerpt from http://www.trimaxbp.com)

"Trimax Structural Lumber is a patented formulation of fiberfill and recycled milk jugs." (*Id*. at 1)

"Trimax Structural Lumber is a high-performance construction material consisting of a patented formula of recycled plastics, fiberglass, and select additives. The plastic raw material utilized in Structural Lumber is derived from post-consumer bottle waste such as milk and detergent bottles." (*Id*. at 2)

c. Trimax Promotional Material (Exhibit C, Doc. No. 04_01_2010)

"The product [Trimax] is recyclable[.]" (*Id*. at 1)

d. Evolve Speed Bump Brochure (Exhibit D, Doc. No. 02_10_2009)

"The composite mixture of the end product [EVOLVE speed bump] is at least 90% ReHDPE, utilizing both post-consumer and post-industrial materials." (*Id.* at 1)

e. ICC-ES Evaluation Report for Evolve (Exhibit E, Doc. No. 07_01_2009)

"EVOLVE . . . is made of a plastic composite material that consists of 90 percent recycled high-density polyethylene (HDPE), with the remaining 10 percent being foaming agents and color with ultraviolet inhibitors." (*Id*. at 1)

5. From September 15, 2012 to March 17, 2013, Evolve contained, at most, 58% recycled plastic.

6. During the period from March 2011 to March 2013, the recycled plastic in Trimax, on average, contained less than 12% post-consumer recycled content.

7. By representing that a product is recyclable, respondent implies to reasonable consumers that facilities that will recycle the item are available to a substantial majority of consumers or communities where the item is sold.

8. Local recycling centers do not recycle Evolve and Trimax due to their non-plastic content and size and weight greater than that of household items typically recycled in such centers. The cost to consumers of shipping Evolve and Trimax to Respondent's factory for re-use in the manufacturing process generally exceeds the amount Respondent will pay consumers for returning the item. Facilities that will recycle Evolve and Trimax are thus not available to a substantial majority of consumers or communities where these products are sold.

Count I
False or Misleading Claims

9. Through the means described in Paragraph 4, Respondent has represented, directly or indirectly, expressly or by implication, that:

a. Evolve generally contains over 90% recycled plastic;

b. Evolve is at least 90% recycled plastic;

c. Evolve is 90% recycled plastic;

d. The recycled plastic in Trimax is all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and

e. Evolve and Trimax are recyclable at recycling facilities available to a substantial majority of consumers or communities where N.E.W. sells them.

10. In truth and in fact:

a. From September 15, 2012 to March 17, 2013, Evolve did not generally contain over 90% recycled plastic;

b. From September 15, 2012 to March 17, 2013, Evolve was not at least 90% recycled plastic;

c. From September 15, 2012 to March 17, 2013, Evolve was not 90% recycled plastic;

d. The recycled plastic in Trimax is not all or virtually all post-consumer recycled content such as milk jugs or detergent bottles; and

e. Evolve and Trimax are not recyclable at recycling facilities available to a substantial majority of consumers or communities where N.E.W. sells them.

11. Therefore, the representations set forth in Paragraph 9 are false or misleading.

Count II
Unsubstantiated Claims

12. Through the means described in Paragraph 4, Respondent has represented, expressly or by implication, that it possessed and relied upon a reasonable basis that substantiated the representations set forth in Paragraph 9 at the time the representations were made.

13. In truth and in fact, Respondent did not possess and rely upon a reasonable basis that substantiated the representations set forth in Paragraph 9 at the time the representations were made. Therefore, the representation set forth in Paragraph 12 was, and is, false or misleading.

Count III
Means and Instrumentalities

14. In connection with the advertising, promotion, offering for sale, or sale of Evolve and Trimax, Respondent has distributed promotional materials making the representations set forth in Paragraph 4 to retailers and independent distributors. In so doing, Respondent has provided them with the means and instrumentalities for the commission of deceptive acts or practices.

Violations of Section 5

15. Respondent's false or misleading representations constitute deceptive acts or practices in or affecting commerce, in violation of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a).

THEREFORE, the Federal Trade Commission this third day of April, 2014, has issued this Complaint against Respondent.

By the Commission.

Complaint

Exhibit A

Complaint

Deck/Dock/Porch
CONSUMER

PRODUCT FEATURES
Colors and Finishes
Profiles
Environmental Impact
Lifetime Warranty
Care and Maintenance
FAQs

APPLICATIONS
Decks
Docks
Porches and Restoration
Featured Project
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FAQs - Consumer

For additional information and construction details, visit the FAQ Professional page.

Q. What is EVOLVE® high-density plastic lumber?
A. EVOLVE high-density plastic lumber is a solid, non-hollow foamed recycled plastic made from recycled high density polyethylene (ReHDPE) plastic, with no fillers. Common HDPE (recycling code # 2) products are gallon style milk, water and juice containers, as well as some detergent and shampoo bottles.

Q. What percentage of EVOLVE high-density plastic lumber is made from recycled plastic?
A. EVOLVE plastic lumber is 100% plastic with no wood fillers to rot, peel, weather or blister, and generally contains over 90% recycled HDPE plastic material.

Q.How much does EVOLVE alternative plastic decking weigh?
A. EVOLVE® plastic decking is comparable in weight to a good hardwood such as oak.

Q. What standard decking colors are available in inventory?
A. Standard colors in our deck and dock profiles are Dove Gray, Cedar, Weatherwood, and some railing material in White. Standard decking profile colors are subject to change over time.

Q. Are the EVOLVE plastic lumber boards colored throughout?
A. Yes, even when cut or routered, the exposed product is colored.

Q. Will my EVOLVE plastic lumber boards have consistent color and texture?
A. We make every effort to maintain color consistency. However, due to utilizing recycled materials, and the standard allowable variances in the color we purchase, shade variations can occur in our lumber. The texture may be slightly different from board to board due to the manufacturing process.

Q. Can an EVOLVE deck be stained or painted?
A. Staining or painting will not harm alternative decking material from EVOLVE. However, EVOLVE was designed to eliminate the need for such work. Stain or paint, if applied to the boards, will not penetrate the surface because the product doesn't absorb moisture. Therefore, stains or paints will tend to flake off the surface of the material over time.

Q. Will EVOLVE plastic lumber fade over time?
A. All of our EVOLVE high density plastic lumber has ultra-violet (UV) stabilizers added to help protect the color and the integrity of the HDPE.

Q. Do you have any minimum order requirements?
A. Yes. Please see the Profile Chart for minimum order quantities.

Q. Does EVOLVE plastic lumber have a grain pattern?
A. EVOLVE high density plastic lumber is very durable, and yet flexible. It does require more substructure compared to wood lumber because it doesn't have a grain pattern. Our product eliminates gram splitting.

Q. How long will my EVOLVE deck or dock last?
A. EVOLVE high density plastic lumber is still going strong after over twenty years of accelerated weather testing. We haven't seen the total life span of the product to date. We do have product installed on boat docks since 1976 with no sign of degradation.

Q. How do I take care of my plastic lumber decking?
A. Washing EVOLVE plastic lumber with a hose or a mop is about all that is needed under normal circumstances. You can use a mixture of bleach and water (1 part bleach to 10 parts water) to clean stubborn stains on the material.

Q. Will an EVOLVE deck or dock be slippery when wet?
A. EVOLVE high density plastic lumber is no more slippery than painted or sealed wood when wet. A natural film, which can't be seen or felt, is left on the surface of the material after manufacturing. Sunlight will normally "burn off" this film in a few weeks.

2


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Environmental Impact
Sustainable Manufacturing
EVOVLE® is 100% polyethylene recyclable plastic. Companies who use it can promote their commitment to green manufacturing and appeal to a growing consumer demand for environmentally responsible products.
EVOLVE recycled plastic lumber products generally contain over 90% recycled high density polyethylene (ReHDPE) material.
Highly sanitized, pure plastic from post-consumer and post-industrial material
No harsh chemicals to leech into the environment
100% recyclable
Because EVOLVE doesn't absorb water, it won't harbor harmful mold or bacteria. That means a healthier environment for you and the rest of the world.
Our Green Initiative
GreenScapes
N E W Plastics Corp makes efforts to reduce the footprint of human consumption. This seal represents our commitment to corporate policies and practices that protect the environment for future generations.
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RENEW PLASTICS

Complaint

LEGACY REPORT

NER-702
Issued March 1, 2004

ICC Evaluation Service, Inc.
www.icc-es.org

Business/Regional Office ▪ 5360 Workman Mill Road, Whittier, California 90601 ▪ (562) 699-0543
Regional Office ▪ 900 Montclair Road, Suite A, Birmingham, Alabama 35213 ▪ (205) 599-9800
Regional Office ▪ 4051 West Flossmoor Road, Country Club Hills, Illinois 60478 ▪ (708) 799-2305

Legacy report on the 2000 International Building Code®, the *2002 Accumulative Supplement to the International Codes*™, the BOCA® *National Building Code*/1999, the 1999 *Standard Building Code*®, the 1997 *Uniform Building Code*™, and the 2000 *International Residential Code*®

DIVISION 06 - WOOD AND PLASTICS
Section 06500 - Structural Plastics

RENEW PLASTICS,
A DIVISION OF N.E.W. PLASTICS CORP.
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(920) 845-2326

1.0 SUBJECT

1.1 Perma-Poly™ Lumber Plastic Decking
1.2 EVOLVE® Lumber Plastic Decking

2.0 PROPERTY FOR WHICH EVALUATION IS SOUGHT

Structural

3.0 DESCRIPTION

3.1 General

RENEW Plastics' Perma-Poly™ and EVOLVE® Lumber Plastic Decking are used as a flooring or non-structural trim components for exterior balconies, porches, decks, and other exterior walking surfaces where combustible construction is permitted. Perma-Poly™ and EVOLVE® are the same product with different names for marketing purposes. Perma-Poly™ and EVOLVE® is a plastic composite material that consists of at least 90% recycled Type 2 High Density Polyethylene (HDPE) with the remainder of material being foaming agents and color with UV inhibitors. The HDPE composite material is manufactured by a continuous extrusion process in accordance with the listed quality control manual to produce comparable lumber-sized members with nominal sizes as listed in Table 1 of this report.

3.2 Structural

Table 1 lists the allowable spans of Perma-Poly™ and EVOLVE® Lumber used as decking (flat-wise bending).

4.0 INSTALLATION

The manufacturer's published installation instructions and this report shall be strictly adhered to and a copy available on the jobsite at all times during installation. The installation instructions within this report govern if there are any conflicts between the manufacturer's published installation instructions and this report.

TABLE 1
MAXIMUM ALLOWABLE SPANS[1,2,3]

LUMBER SIZE (inches)	MAXIMUM UNIFORM LOAD	
	40 psf	100 psf
	SPAN (inches)	
¾ x 5½	12	9
¾ x 6	12	9
1 x 5½	16	11
1½ x 3½	16	11
1½ x 5½	23	17

SI: 1 inch = 25.4 mm, 1 psf = 47.88 Pa

1. Spans are for members used as planking (flat-wise bending).
2. Members shall be supported by a minimum of three joist (2 spans) and shall be fastened at each joist.
3. Use of members as stair treads is outside the scope of this table.

5.0 IDENTIFICATION

Perma-Poly™ and EVOLVE® Lumber Plastic Decking planks shall be labeled with the manufacturer's name and/or trademark, the product name, the name and/or trademark of the third party inspection agency (Intertek) and this evaluation report number.

6.0 EVIDENCE SUBMITTED

6.1 Manufacturer's descriptive literature and installation instructions.

6.2 Test report on EVOLVE® Lumber in accordance with ASTM D 6662, prepared by Intertek Testing Services, Report No. 3022869, dated January 9, 2003, Revised January 17, 2003, signed by Kazamir L.. Falconbridge and Cameron Robinson.

6.3 Test report on Fire Retardancy Test of a RENEW Plastics Lumber Decking Boards, prepared by Intertek Testing Services, Report No. 3025606, dated June 10, 2002, signed by Kent Kelsey and Rick Curkeet.

6.4 Quality Control/Factory Audit Manual for EVOLVE®or Perma-Poly™ Recycled Plastic Lumber, dated November 2002, Revised December 19, 2003, signed by Lynie Vincent (RENEW Plastics) and Mike Van Geyn (Intertek Testing).

6.5 Letter on equivalency of product sizes, prepared by Intertek Testing Services, dated February 25, 2003, signed by Chris Bowness and Francis Roma.

6.6 Test report on Standard Flame Spread Test Program in accordance with ASTM E 84, prepared by Intertek Testing Services, Report No. 3031070, dated August 30, 2002, signed by Greg Philp and Michael van Geyn.

6.7 Span length calculations for 40 psf and 100 psf at 130°F, prepared by Intertek Testing Services, Project 3022869, dated July 30, 2003, signed and sealed by Cameron Robinson, P.Eng.

7.0 CONDITIONS OF USE

The ICC-ES Subcommittee for the National Evaluation Service, Inc. finds that the application of Perma-Poly™ and EVOLVE® Lumber Plastic Decking as described in this report complies with or is a suitable alternate to the materials prescribed in the 2000 International Building Code®, the *2002 Accumulative Supplement to the International Codes*™, the BOCA® *National Building Code*/1999, the 1999 *Standard Building Code*©, the 1997 *Uniform Building Code*™, and the 2000 *International Residential Code*® subject to the following conditions:

7.1 Perma-Poly™ and EVOLVE® Lumber Plastic Decking shall be limited to exterior applications where combustible construction is permitted.

7.2 Use of Perma-Poly™ and EVOLVE® Lumber Plastic Decking in applications where fire-rated construction is required is outside the scope of this report.

7.3 Perma-Poly™ and EVOLVE® Lumber shall be gapped to permit adequate drainage in accordance with the manufacturer's instructions.

7.4 Perma-Poly™ and EVOLVE® Lumber shall not be attached to any solid surface or watertight flooring system, such as sheathing, waterproof membranes, concrete, roof decks, or patios.

7.5 Use of Perma-Poly™ and EVOLVE® Lumber in applications where the code requires solid-sawn lumber to be naturally durable or preservative-treated is outside the scope of this report.

7.6 Use of Perma-Poly™ and EVOLVE® Lumber for single span applications is outside the scope of this report.

7.7 Perma-Poly™ and EVOLVE® Lumber shall be fastened directly to floor joists having adequate strength and stiffness in accordance with the applicable code.

7.8 Perma-Poly™ and EVOLVE® Lumber shall not be used in applications that will cause the temperature of the board to exceed 130°F (54°C).

7.9 This report is subject to periodic re-examination. For information on the current status of this report, consult the ICC-ES website.

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- Machinability
- Profiles
- Environmental Impact
- Lifetime Warranty
- Trademark
- FAQs

APPLICATIONS
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Applications

Strong, Recyclable Plastic

EVOLVE® is strong, impervious to most chemicals, needs minimal (if any) maintenance, and is highly cost effective. EVOLVE is composed of polyethylene and is entirely recyclable.

Material Characteristics
- Non-absorptive
- Impervious to most chemicals
- Solid color to core
- Durable, wear resistant
- Flame resistant
- Environmentally friendly
- Machinable
- Variety of colors

Application Benefits
- Trim costs
- Increase product life
- Decrease noise
- Reduce wear
- Minimize downtime



EVOLVE has been successfully utilized in many industrial, commercial and agricultural applications.

Product Application List

N.E.W. Plastics Corp. makes efforts to reduce the footprint of human consumption. This seal represents our commitment to corporate policies and practices that protect the environment for future generations.

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RENEW PLASTICS

MATERIAL COMPOSITION & TESTING DATA

EVOLVE

EVOLVE® LUMBER

EVOLVE lumber is a solid, non-hollow, foamed recycled product manufactured from recycled Type 2 High Density Polyethylene (ReHDPE), with no fillers. The composite mixture of the end product is at least 90% ReHDPE, utilizing both post-consumer and post-industrial materials. The plastic is impregnated with colorant and UVI to help protect the material from physical degradation, flaking and color fade.

EVOLVE lumber is a non-commingled "pultruded" product. This promotes a network of complete molecular linkage. EVOLVE lumber is able to sustain normal loading at temperatures ranging from -40°F to 110°F with proper installation.

EVOLVE lumber is manufactured using only heavy-metal free colorants, to be environmentally friendly, and to meet current and future federal standards.

PERMA-POLY® SHEETING

Perma-Poly sheet material is manufactured from a mixture of virgin and recycled Type 2 High Density Polyethylene (HDPE & ReHDPE). The composite mixture of the end product is at least 50% ReHDPE, utilizing both post-consumer and post-industrial materials. The plastic is impregnated with colorant and UVI to help protect the material from physical degradation, flaking and color fade.

Perma-Poly sheet is a non-commingled, extruded product. This promotes a network of complete molecular linkage. Perma-Poly sheet is able to sustain normal loadings at temperatures ranging from -40°F to 110°F with proper installation.

Perma-Poly sheet is manufactured using only heavy-metal free colorants, to be environmentally friendly, and to meet current and future federal standards.

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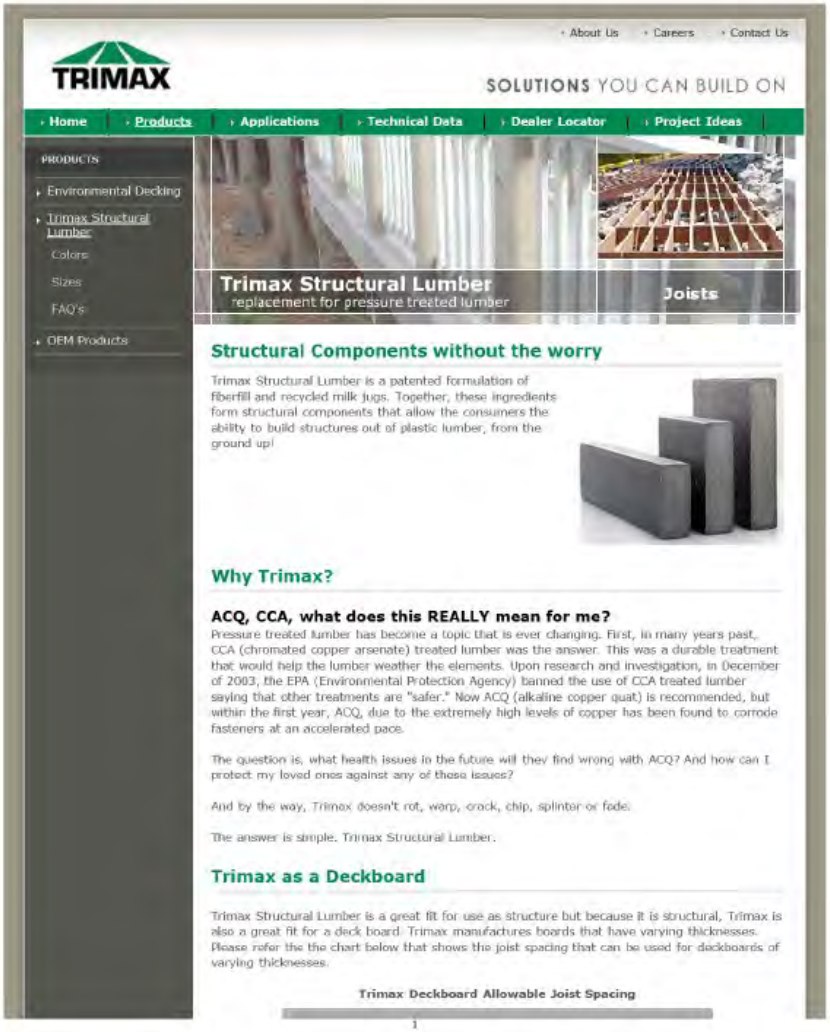
RENEW PLASTICS

Complaint

Exhibit B



Technical Data

TRIMAX® Structural Lumber

DESCRIPTION

TRIMAX® Structural Lumber is a high-performance construction material consisting of a patented formula of recycled plastic, fiberglass, and select additives. The plastic raw material utilized in Structural Lumber is derived from post-consumer bottle waste such as milk and detergent bottles. The material is compounded into a consistent mixture of fiberglass and plastic that give it the structural properties in the table below.

Structural Lumber is a cost-effective and high-performance timber product for marine construction and commercial applications. It has exceptional resistance to marine borers, salt spray, termites, corrosive substances, oil and fuels, fungi, and other environmental stresses. It does not absorb moisture; therefore, it will not rot, splinter or crack.

Structural Lumber products are manufactured in many dimensional lumber and timber sizes, particularly in large cross sections. Deck and dock planks, sheet piling, wale timbers, camels, fenders, and piles are all available from TRIMAX® Structural Lumber. The product comes in almost any transportable length and is standard in Black. It can be special ordered in colors to complement HDPE.

Structural Lumber has excellent weathering resistance; however, as with many other polyolefins, the material will fade over the service life of the product. The product requires no waterproofing, painting, staining, or similar maintenance when used in many exterior applications.

BASIC USES

Structural Lumber products are used in a variety of commercial and marine applications and are often the product of choice for exterior applications where resistance to salt and fresh water, marine borers, and other environmentally harsh conditions is required. Due to the unique composition of TRIMAX® Structural Lumber, the product can be used for a number of structural members in commercial and shoreline timberwork. It is well suited for:

- ⇒ Dock and dock planks
- ⇒ Sheet piling
- ⇒ Pilings
- ⇒ Channel markers
- ⇒ Wale Timbers
- ⇒ Camels
- ⇒ Fenders
- ⇒ Posts, beams, and joists

Structural Properties

Mechanical Properties @ 70° F	Test Method	Average Value
Density, lbs / cu. in.	ASTM D6111-09	0.034
Water Absorption	ASTM D570-98	< 0.1
Modulus of Rupture (MOR)	ASTM D6109-05	4,134 psi
Modulus of Elasticity (MOE)	ASTM D6109-05	329,787 psi
Secant MOE @ 1% Strain	ASTM D6109-05	288,751 psi
Compression Parallel to Grain	ASTM D198-05	3,716 psi
Compression Perpendicular to Grain	ASTM D143-94	2,516 psi
Shear Strength	ASTM D143-94	1,828 psi
Tensile Strength	ASTM D198-05	3,676 psi
Durometer Hardness	ASTM D2240-05	68.2
Abrasion Resistance	ASTM D4060-10	42 mg
Chemical Resistance	ASTM D543-06	5%
Tensile Properties	ASTM D638-10	3860 psi
Coefficient of Friction (Dry)	ASTM D2047	0.95
Coefficient of Thermal Expansion	ASTM D6341-98	0.000021
Screw Withdrawal	ASTM D1761-06	938 lbf/in
Flame spread	ASTM E84	Class C

- *1 ½ x 5 ½ TRIMAX® profile used in testing data at various lengths required by the test method noted*
- *Lower density may occur in larger cross sections*
- *The above testing was performed by an independent 3rd party testing agency in January 2012*

TRIMAX
STRUCTURAL LUMBER™
112 Fourth Street * P.O. Box 480
Luxemburg, WI 54217-0480
Toll Free: 1-800-666-5207 Fax: 920-845-2335
www.trimaxbp.com

LIMITATIONS

This type of plastic lumber product has a significantly higher modulus of elasticity (MOE) than conventional forms of plastic lumber. It is important to evaluate the suitability of this product for specific uses. It is recommended that an engineering study be performed prior to use of Structural Lumber products for structural applications. Building code regulations vary by region, so all users should consult local building and safety codes prior to installation for specific requirements.

INSTALLATION

Structural Lumber can be fabricated and installed with the same tools used to work wood lumber. The product will cut and drill very cleanly, as there is no grain to split or chip, or knots to bind tools and bend fasteners. It is reinforced with glass fibers, and precautions should be taken when fabricating this product. Maintain adequate ventilation when generating fabrication dust, and personal respiratory protection such as dust masks should be employed during fabrication, as well as safety glasses or goggles.

Pilings and sheet piling products, can be driven with pile-driving equipment such as vibratory hammers, land-based or barge-mounted drop hammers, or waterjets. For sheet piling installations, backfill soils should always be analyzed to determine that the proper amount of force would be exerted on the sheet piling system. For shoreline timberwork applications, Structural Lumber is used with conventional hardware such as stainless or galvanized bolts, tie rods, nuts, washers, and anchor systems.

When using Structural Lumber for decking, joist spacing should be in accordance with the span tables. Multiple-span data at 120°F or less are presented here:

Structural Allowable Live Load (psf), Multiple Span, at 120° F or less:			
Deflection Limit	12" Span	16" Span	24" Span
Structural 2X Decking Board (I = 1.50")			
L/360	2198 PSF	927 PSF	275 PSF
L/240	3000* PSF	1391 PSF	412 PSF
L/180	3000* PSF	1618* PSF	550 PSF

*Load limited by allowable stress of 1000 psi.

Note: Table provides limiting uniform load present on three spans in pounds per square foot (psf) based on noted deflection criteria.

Recommended standard is to limit live load deflection for floors to L/360" and to limit total deflection (dead + live load) to L/240". Designers may choose less restrictive or more restrictive criteria for a given application. Except for very unusual and heavy loading, deflection criteria will control allowable plank span.

Deflection determination is based on a modulus of elasticity equal to 325,000 psi at 70° Fahrenheit.

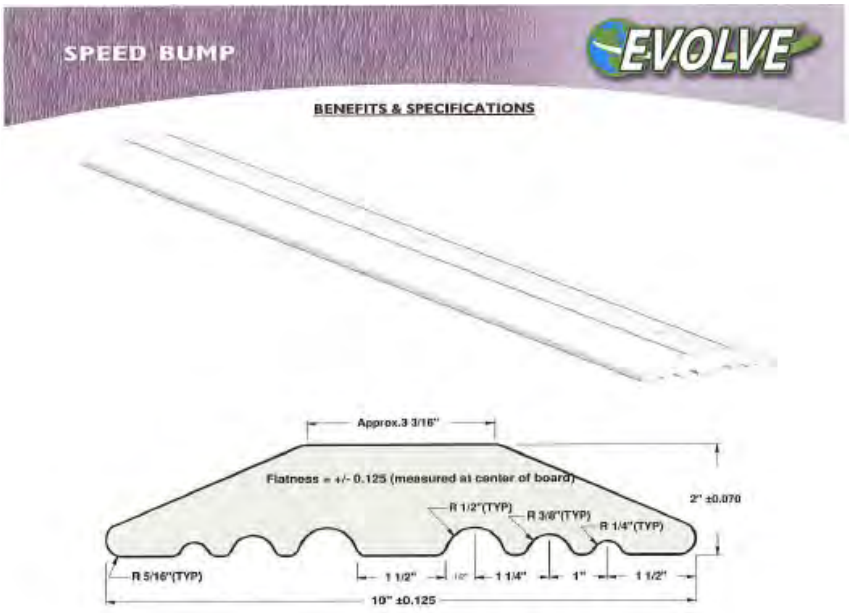
Technical Services: Technical inquiries should be directed to RENEW Plastics at 1-800-666-5207 or visit our website at http://www.trimaxbp.com

Updated 2/28/13

Complaint

Exhibit C

Exhibit D



COLORS: Standard = Safety Yellow
Special Order colors are available – contact RENEW Plastics for more details.

Slight color variations may occur from one production run to another due to variations in recycled feedstock and standard allowable tolerances of colorants used in the manufacturing process.

LENGTHS: Standard = 4', 6', 8', 9', 10', and 12'
Special Order lengths are available in virtually any desired length - contact RENEW Plastics for more details.

COMPOSITION: EVOLVE® speed bumps are solid, non-hollow, foamed recycled products manufactured from recycled Type 2 High Density Polyethylene (ReHDPE), with no fillers. The composite mixture of the end product is at least 90% ReHDPE, utilizing both post-consumer and post-industrial materials. The plastic is impregnated with colorant and UVI to help protect the material from physical degradation, flaking and color fade.

EVOLVE plastic extrusions are non-commingled "pultruded" products. This promotes a network of complete molecular linkage. EVOLVE products are able to sustain normal loadings at temperatures ranging from -40°F to 110°F with proper installation.

EVOLVE products are manufactured using only heavy-metal free colorants, to be environmentally friendly, and to meet current and future federal standards.

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RENEW PLASTICS

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Exhibit E

ICC EVALUATION SERVICE

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ICC-ES Evaluation Report

ESR-2497

Issued July 1, 2009

This report is subject to re-examination in one year.

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DIVISION: 06—WOOD AND PLASTICS
Section: 06500—Structural Plastics

REPORT HOLDER:

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EVALUATION SUBJECT

EVOLVE® PLASTIC LUMBER DECKING (ALSO KNOWN AS PERMA-POLY DECKING)

1.0 EVALUATION SCOPE

Compliance with the following codes:

- 2006 *International Building Code®* (IBC)
- 2006 *International Residential Code®* (IRC)

Properties evaluated

- Structural
- Durability
- Surface-burning characteristics

2.0 USES

The EVOLVE® (also known as Perma-Poly) Plastic Lumber Decking is limited to exterior use applications as deck boards for balconies, porches and decks of one- and two-family dwellings of Type V-B (IBC) construction and dwellings constructed in accordance with the IRC.

3.0 DESCRIPTION

3.1 General:

EVOLVE® or Perma-Poly Plastic Lumber Decking is made of a plastic composite material that consists of 90 percent recycled high-density polyethylene (HDPE), with the remaining 10 percent being foaming agents and color with ultraviolet inhibitors. The deck boards are manufactured by an extrusion process in the colors black, dove grey, dark green, weatherwood, cherrywood and white. The deck boards are manufactured in $^{3}/_{4}$-inch-by-$3^{1}/_{2}$-inch (19 by 89 mm), $^{3}/_{4}$-inch-by-$5^{1}/_{4}$-inch (19 by 140 mm), $^{7}/_{8}$-inch-by-6-inch (19 by 152 mm) tongue and groove, 1-inch-by-$5^{1}/_{4}$-inch (25.4 by 140 mm), 1-inch-by-6-inch (25.4 by 152 mm) tongue and groove, $1^{1}/_{2}$-inch-by-$3^{1}/_{2}$-inch (38 by 89 mm), $1^{1}/_{2}$-inch-by-$5^{1}/_{4}$-inch (38 by 140 mm) and 1-inch-by-$11^{1}/_{4}$-inch (25.4 by 286 mm) solid profiles. See Figure 1 for typical cross sections.

3.2 Durability:

When subjected to weathering, insect attack, and other decaying elements, the material used to manufacture EVOLVE® decking is equivalent in durability to preservative-treated or naturally durable lumber when used in locations described in Section 2.0 of this report. The deck boards have been evaluated for structural use when exposed to temperatures from -20°F to 125°F (-29°C to 52°C).

3.3 Surface-burning Characteristics:

When tested in accordance with ASTM E 84, the deck board products have a flame-spread index no greater than 200.

4.0 DESIGN AND INSTALLATION

4.1 General:

Installation of the deck boards must comply with this report and the manufacturer's published installation instructions. The manufacturer's published installation instructions must be available at the jobsite at all times during installation. When the manufacturer's published installation instructions differ from this report, this report governs.

4.2 Design (Structural):

When used as a deck board, EVOLVE® decking products have an allowable capacity, when installed at a maximum center-to-center spacing of supporting construction, as prescribed in Table 1.

4.3 Installation:

The end-to-end gap of the deck boards must be $^{7}/_{16}$ inch (1.6 mm) for every 20°F (11°C) of difference between the installation temperature and the hottest anticipated temperature after installation. A minimum $^{1}/_{8}$-inch (3.2 mm) gap must be provided between deck board edges. The end of each deck board must be supported by a joist. Double joists are required where decking butt-joints occur. The EVOLVE® deck boards must be attached at each joist with two No. 7 by $2^{1}/_{4}$-inch-long (57 mm) corrosion-resistant screws. Minimum fastener edge and end distances must be 1 inch (25.4 mm).

5.0 CONDITIONS OF USE

The EVOLVE® decking described in this report complies with, or is a suitable alternative to what is specified in, those codes listed in Section 1.0 of this report, subject to the following conditions:

5.1 The EVOLVE® (also known as Perma-Poly) Plastic Lumber Decking is limited to exterior use applications as deck boards for balconies, porches and decks of one- and two-family dwellings of Type V-B (IBC) construction and dwellings constructed in accordance with the IRC.

5.2 Balconies constructed on one- and two-family dwellings in accordance with the IBC and rated for 60 psf (2874 Pa) must not exceed 100 square feet (9.29 m^2) in total area.

5.3 The use of EVOLVE® deck boards as stair treads is outside the scope of this report.

5.4 Installation must comply with this report, the manufacturer's published installation instructions and the applicable code. When the manufacturer's published installation instructions differ from this report, this report governs.

5.5 The use of deck boards as a component of a fire-resistance-rated assembly is outside the scope of this report.

5.6 Only those fasteners and fastener configurations described in this report have been evaluated for installation of the EVOLVE® deck boards. The compatibility of the fasteners with the supporting construction, including chemically treated wood, is outside the scope of this report.

5.7 Adjustment factors outlined in the AF&PA National Design Standard and applicable codes do not apply to the allowable capacity and maximum spans for EVOLVE® deck boards.

5.8 The EVOLVE® decking must be fastened to supporting construction. Where required by the code official, engineering calculations and construction documents consistent with this report must be submitted for approval. The calculations must verify that the supporting construction complies with the applicable building code requirements and is adequate to resist the loads imparted upon it from the products and systems discussed in this report. The documents must contain details of the attachment to the supporting structure consistent with the requirements of this report. The documents must be prepared by a registered design professional where required by the statutes of the jurisdiction in which the project is to be constructed.

5.9 The EVOLVE® decking is manufactured in Luxemburg, Wisconsin, under a quality control program with inspections by Intertek Testing Services Inc. (AA-690).

6.0 EVIDENCE SUBMITTED

Data in accordance with the ICC-ES Acceptance Criteria for Deck Board Span Ratings and Guardrail Systems (Guards and Handrails) (AC174), dated February 2006 (editorially revised April 2009).

7.0 IDENTIFICATION

The EVOLVE® decking described in this report is identified by a stamp on each individual piece or on the packaging. The stamp includes the manufacturer's name (RENEW Plastics), the product name (EVOLVE® decking), the name of inspection agency (Intertek Testing Services) and the ICC-ES evaluation report number (ESR-2497).

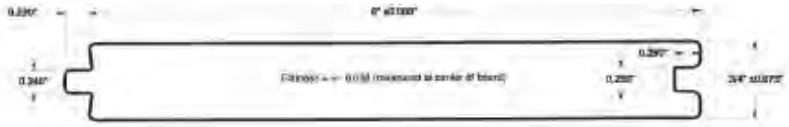
Complaint

TABLE 1—DECK BOARD SPAN RATINGS

DECK BOARD	MAXIMUM SPAN (inches)[1]	ALLOWABLE CAPACITY (lb/ft^2)[2, 3]
EVOLVE® $^3/_4$-by-3$^1/_2$	12	100
EVOLVE® $^3/_4$-by-5$^1/_2$	12	60
EVOLVE® $^3/_4$-by-6 T&G	12	60
EVOLVE® 1-by-5$^1/_2$	16	60
EVOLVE® 1$^1/_4$-by-3$^1/_2$	24	60
EVOLVE® 1$^1/_2$-by-5$^1/_2$	24	100
EVOLVE® 1-by-6 T &G	16	100
EVOLVE® 1-by- 11$^7/_4$ Bull Nose (used as deck board only)	16	100

For SI: 1 inch = 25.4 mm; 1 lb/ft^2 = 47.9 Pa.

[1] Maximum span is measured center-to-center perpendicular, of the supporting construction.
[2] Maximum allowable capacity is adjusted for durability. No further increases are permitted.
[3] Under the IBC, deck boards not rated for at least 100 lb/ft^2 are limited to 100 square feet (9.29 m^2) in total area.



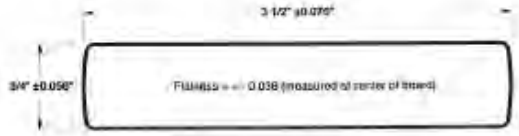
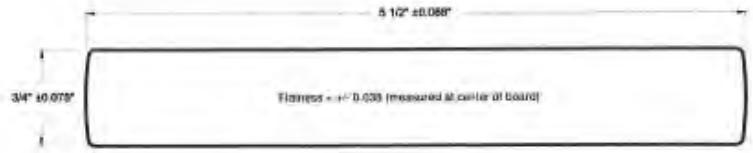
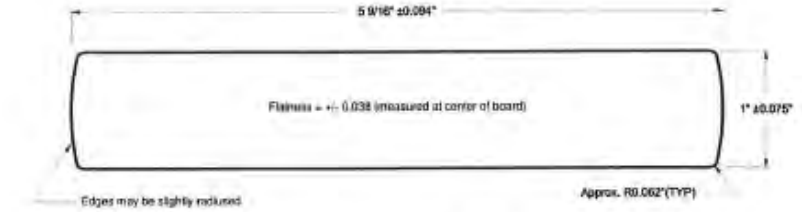


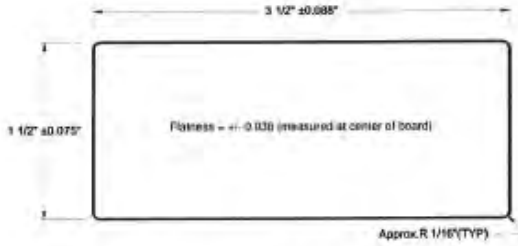
FIGURE 1—DECK BOARD PROFILES



$^{3}/_{4}$" x 5$^{1}/_{2}$" Flat
Approximate Unit Weight -1.48 Lbs./Lin. Ft.

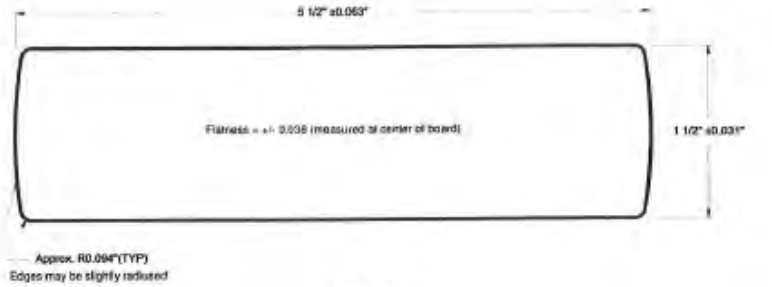


1" x 5$^{1}/_{2}$" Flat
Approximate Unit Weight – 1.76 Lbs./Lin. Ft.

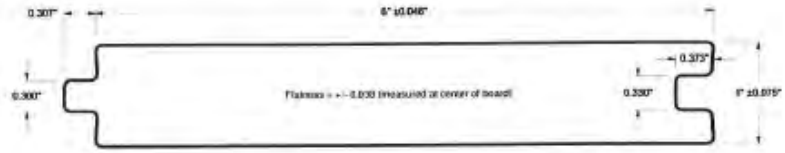


1$^{1}/_{2}$" x 3$^{1}/_{2}$"
Approximate Unit Weight – 1.69 Lbs/Lin. Ft.

FIGURE 1—DECK BOARD PRFILES (Continued)



1 1/2" x 5 1/2"
Approximate Unit Weight – 3.75 Lbs./Lin. Ft.



1" x 6" T&G
Approximate Unit Weight – 1.92 Lbs./Lin. Ft.

1" x 11 1/4" Bullnose
Approximate Unit Weight – 3.68 Lbs./Lin. Ft.

FIGURE 1—DECK BOARD PROFILES (Continued)

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint that the Bureau of Consumer Protection proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge the respondent with violation of the Federal Trade Commission Act, 15 U.S.C § 45 *et seq*.; and

The respondent, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order ("consent agreement"), a statement that respondent neither admits nor denies any of the allegations in the draft complaint except as specifically stated in the consent agreement, an admission by the respondent of facts necessary to establish jurisdiction for purposes of this action, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it has reason to believe that the respondent has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such consent agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1 Respondent N.E.W. Plastics Corp., also doing business as Renew Plastics, is a Wisconsin corporation with its principal office or place of business at 112 Fourth Street, Luxemburg, Wisconsin 54217.

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

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

A. "Clearly and prominently" means:

1. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text, so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read and comprehend it;

2. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented, so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read and comprehend it; and

3. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.

B. "Close proximity" means on the same print page, web page, online service page, or other electronic page, and proximate to the triggering representation, and not accessed or displayed through hyperlinks, pop-ups, interstitials, or other means.

C. "Commerce" means as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44.

D. "Competent and reliable scientific evidence" means tests, analyses, research, or studies that have been conducted and evaluated in an objective manner by qualified persons, that are generally accepted in the profession to yield accurate and reliable results, and that are sufficient in quality and quantity based on standards generally accepted in the relevant scientific fields, when considered in light of the entire body of relevant and reliable scientific evidence, to substantiate that a representation is true.

E. Unless otherwise specified, "respondent" means N.E.W. Plastics Corp., a corporation, and its successors and assigns.

I.

IT IS ORDERED that respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or package, shall not make any representation, in any manner, expressly or by implication, about:

A. The recycled content of any product or package;

B. The post-consumer recycled content, such as milk jugs or detergent bottles, of any product or package; or

C. The environmental benefit of any product or package;

unless such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates that the representation is true. If, in general, experts in the relevant scientific fields would conclude it is necessary, such evidence must be competent and reliable scientific evidence. For any representation that a product or package contains recycled content, such evidence must show that any recycled content in such product or package is composed of materials that have been recovered or otherwise diverted from the waste stream.

II.

IT IS FURTHER ORDERED that respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or package, shall not represent, in any manner, expressly or by implication, that any such product or package is recyclable, unless:

A. The entire item, excluding minor incidental components, can be collected, separated, or otherwise recovered from the waste stream through an established recycling program for reuse or use in manufacturing or assembling another item;

B. Recycling facilities that accept the item for recycling are available:

1. to a substantial majority (at least sixty (60) percent) of consumers or communities where the item is sold; or

2. to less than a substantial majority (at least sixty (60) percent) of consumers or communities where the item is sold and respondent discloses, clearly and prominently and in close proximity to the representation, the limited availability of recycling for the item and the extent to which it is limited, such as by disclosing the percentage of consumers or communities that have access to facilities that recycle such item;

and such representation is true, not misleading, and, at the time it is made, respondent possesses and relies upon competent and reliable evidence that substantiates that the representation is true. If, in general, experts in the relevant scientific fields would conclude it is necessary, such evidence must be competent and reliable scientific evidence.

Provided, if respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any product or package that is partially recyclable, represents that such product or package is recyclable, respondent must disclose, clearly and prominently and in close proximity to the representation, the part or portion of the product or package that is recyclable.

III.

IT IS FURTHER ORDERED that respondent, its officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service, shall not provide to others the means and instrumentalities with which to make, directly or indirectly, expressly or by implication, including through the use of endorsements or trade names, any false, unsubstantiated, or otherwise misleading representation of material fact. For the purposes of this Part, "means and instrumentalities" means any information, including, but not necessarily limited to, any

advertising, labeling, telemarketing scripts, or promotional, sales training, or purported substantiation materials, for use by trade customers in their marketing of any product or package, in or affecting commerce.

IV.

IT IS FURTHER ORDERED that respondent shall deliver as soon as practicable, but in no event later than thirty (30) days after the date of service of this order, an exact copy of the notice attached hereto as Attachment A, showing the date of delivery, to all of respondent's retailers and distributors, and all other entities to which respondent provided point-of-sale advertising for the products identified in Attachment A. The notice required by this paragraph shall not include any document or enclosures other than those referenced in the notice and may be sent to the principal place of business of each entity.

V.

IT IS FURTHER ORDERED that respondent shall, for five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VI.

IT IS FURTHER ORDERED that respondent shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondent shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities. Respondent must maintain and upon request make available to the Federal Trade Commission for inspection and copying all acknowledgments of receipt of this order obtained pursuant to this Part.

VII.

IT IS FURTHER ORDERED that respondent shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. *Provided, however*, that, with respect to any proposed change in the corporation about which respondent learns less than thirty (30) days prior to the date such action is to take place, respondent shall notify the Commission as soon as is practicable after obtaining such knowledge. Unless otherwise directed by a representative of the Commission in writing, all notices required by this Part shall be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "N.E.W. Plastics Corp., File No. 132 3126, Docket No. C-4449."

VIII.

IT IS FURTHER ORDERED that respondent, within sixty (60) days after the date of service of this order, shall file with the Commission a true and accurate report, in writing, setting forth in detail the manner and form in which respondent has complied with this order. Within ten (10) days of receipt of written notice from a representative of the Commission, respondent shall submit additional true and accurate written reports. Unless otherwise directed by a representative of the Commission in writing, all reports required by this Part shall also be emailed to Debrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: "N.E.W. Plastics Corp., File No. 132 3126, Docket No. C-4449."

IX.

This order will terminate on April 3, 2034, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; *provided, however*, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in less than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order

will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

By the Commission.

ANALYSIS OF CONSENT ORDER TO AID PUBLIC COMMENT

The Federal Trade Commission ("FTC" or "Commission") has accepted, subject to final approval, an agreement containing a consent order from N.E.W. Plastics Corp., a corporation ("Respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter addresses allegedly deceptive green claims that Respondent made while promoting two brands of plastic lumber products, Evolve and Trimax, to retailers, independent distributors and end-use consumers. According to the FTC complaint, Respondent marketed (1) Evolve products as made from 90% or more recycled content; (2) Trimax products as made from mostly post-consumer recycled content; and (3) both Trimax and Evolve as recyclable. The complaint alleges first that each of these claims is false and misleading. It also alleges that Respondent did not possess or rely upon a reasonable basis to substantiate these representations. Finally, it alleges that Respondent provided its retailers and distributors with deceptive promotional materials, *i.e.*, the means and instrumentalities to deceive consumers. Thus,

the three-count complaint alleges that Respondent engaged in deceptive practices in violation of Section 5(a) of the FTC Act.

The proposed consent order contains several provisions designed to prevent Respondent from engaging in similar acts and practices in the future. Part I prohibits N.E.W. from making representations regarding the recycled content, the post-consumer recycled content, or the environmental benefit of any product or package unless they are true, not misleading, and substantiated by competent and reliable evidence. Part I further provides that if, in general, experts in the relevant scientific field would conclude it necessary, such evidence must be competent and reliable scientific evidence. Consistent with the Guides for the Use of Environmental Marketing Claims ("Green Guides"), 16 C.F.R. § 260.13(b), Part I specifically requires N.E.W. to substantiate recycled content claims by demonstrating that such recycled content is composed of materials that were recovered or otherwise diverted from the waste stream.

Part II prohibits N.E.W. from making an unqualified claim that any product or package is recyclable unless: (1) the item, excluding minor incidental components, can be recycled in an established recycling program, and (2) recycling facilities that accept the item are available to at least 60% of consumers or communities where it is sold. If recycling facilities are available to fewer than 60%, consistent with the Green Guides, 16 C.F.R. § 260.12(b), Part II requires N.E.W. to qualify its claim regarding the availability of recycling facilities. Part II requires such claims to be true, not misleading, and substantiated by competent and reliable evidence. It further provides that if, in general, experts in the relevant scientific field would conclude it necessary, such evidence must be competent and reliable scientific evidence. Finally, Part II provides that if Respondent promotes as recyclable at item that is only partially recyclable, Respondent must disclose the part or portion of the product or package that is recyclable.

Part III prohibits N.E.W. from providing others with the means and instrumentalities to make any false, unsubstantiated, or otherwise misleading representation of material fact regarding any product or package.

Part IV requires N.E.W. to deliver a letter to its distributors and retailers that instructs them to stop using Evolve and Trimax plastic lumber advertising and marketing materials provided by N.E.W. prior to December 2013. This requirement seeks to ensure that deceptive claims will be entirely removed from the market.

Parts V through IX are reporting and compliance provisions. Part V requires Respondent to keep (and make available to the Commission on request): copies of advertisements and promotional materials containing the representations covered by the order; materials relied upon in disseminating those representations; evidence that contradicts, qualifies, or calls into question the representations, or the basis relied upon for the representations. Part VI requires dissemination of the order now and in the future to principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities relating to the subject matter of the order. It also requires Respondent to maintain and make available to the FTC all acknowledgments of receipt of the order. Part VII requires notification to the FTC of changes in corporate status. Part VIII mandates that Respondent submit an initial compliance report to the FTC and make available to the FTC subsequent reports. Part IX is a provision terminating the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed consent order. It is not intended to constitute an official interpretation of the proposed order or to modify its terms in any way.

Complaint

IN THE MATTER OF

COMMUNITY HEALTH SYSTEMS, INC.,
AND
HEALTH MANAGEMENT ASSOCIATES, INC.

CONSENT ORDER, ETC. IN REGARD TO ALLEGED VIOLATIONS OF SECTION 5 OF THE FEDERAL TRADE COMMISSION ACT AND SECTION 7 OF THE CLAYTON ACT

Docket No. C-4427; File No. 131 0202
Complaint, January 21, 2014 – Decision, April 11, 2014

This consent order addresses the $7.6 billion acquisition by Community Health Systems, Inc. ("CHS") of certain assets of Health Management Associates, Inc. The complaint alleges that the acquisition, if consummated, would violate Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act by removing an actual, direct, and substantial competitor from two local markets in Alabama and South Carolina for general acute care inpatient services sold to commercial health plans. The consent order requires CHS to divest the Riverview Regional Medical Center and all associated operations and businesses in and around Gadsden, Alabama, and the Carolina Pines Regional Medical Center and all associated operations and businesses in and around Hartsville, South Carolina.

Participants

For the *Commission*: *Katie Ambrogi*, *Maggie DiMoscato, Michelle Fetterman, Matthew McDonald*, and *Jennifer Schwab.*

For the *Respondents*: *Mark Kovner* and *Bilal Sayyed, Kirkland & Ellis;* and *Steven Bernstein* and *Vadim Brusser, Weil Gotshal.*

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent Community Health Systems, Inc. ("CHS"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire Respondent Health Management Associates, Inc. ("HMA"), a corporation subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C.

§ 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent CHS is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 4000 Meridian Boulevard, Franklin, Tennessee 37067-6325.

2. CHS owns or leases 135 hospitals, comprised of 131 general acute care hospitals and four stand-alone rehabilitation or psychiatric hospitals, located in 29 states. CHS is the second-largest U.S. hospital chain and one of the largest publicly-traded operators of hospitals in the United States. CHS generated approximately $13 billion in revenue in 2012. CHS is, and at all times relevant herein has been, engaged in the sale and provision of general acute care inpatient services ("GAC services").

3. Respondent HMA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its offices and principal place of business located at 5811 Pelican Bay Boulevard, Suite 500, Naples, Florida 34108-2710.

4. HMA operates 71 hospitals located in 15 states. In 2012, HMA generated $5.9 billion in revenue. HMA is, and at all times relevant herein has been, engaged in the sale and provision of GAC services.

II. THE PROPOSED MERGER

5. Pursuant to an Agreement and Plan of Merger dated July 29, 2013, CHS proposes to purchase all of the issued and outstanding common stock of HMA (the "Merger").

III. JURISDICTION

6. Respondents, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

7. The Merger constitutes an acquisition under Section 7 of the Clayton Act, 15 U.S.C. § 18.

IV. THE RELEVANT PRODUCT MARKET

8. The relevant line of commerce in which to analyze the Merger is the sale and provision of GAC services to commercial health plans and commercially insured patients, respectively. GAC services consist of a broad cluster of routine inpatient services that require an overnight hospital stay.

9. GAC services do not include services related to psychiatric care, substance abuse, and rehabilitation services. Likewise, outpatient services are not included in the GAC services market because such services are characterized by different competitive conditions (e.g., different competitors, lower entry barriers) and because health plans and their members generally cannot and would not substitute those services for inpatient services in response to a small but significant and non-transitory increase in price.

V. THE RELEVANT GEOGRAPHIC MARKETS

10. One relevant geographic market in which to assess the competitive effects of the Merger is the area that approximates Etowah County and includes the City of Gadsden, Alabama, or, the "Gadsden Area."

11. In general, patients prefer to obtain GAC services close to home or work. Accordingly, most residents of the Gadsden Area receive GAC services from two locally-situated providers—CHS's Gadsden Regional Medical Center and HMA's Riverview Regional Medical Center. Gadsden Area residents are unlikely to

seek GAC services from more distant providers, even in response to a small but significant and non-transitory increase in price.

12. A second relevant geographic market in which to assess the competitive effects of the Merger is the area that approximates Darlington County and includes the City of Hartsville, South Carolina, or, the "Darlington County Area."

13. As in the Gadsden Area, patients prefer to obtain GAC services close to home or work. Accordingly, most residents of the Darlington County Area receive GAC services from three locally-situated providers—CHS's Carolinas Hospital-Florence, HMA's Carolina Pines Regional Medical Center, and third-party McLeod Regional Medical Center ("McLeod Regional"). Darlington County Area residents are unlikely to seek GAC services from more distant providers, even in response to a small but significant and non-transitory increase in price.

VI. MARKET CONCENTRATION

14. The Gadsden Area market for the provision and sale of GAC services is highly concentrated, and the Merger will substantially increase concentration in this market. The Merger would combine the only two competitively meaningful providers of GAC services to commercially insured patients. Respondents CHS and HMA each own and operate a general acute care hospital that serves this area. Respondents compete on a number of price and non-price factors, including a range of available services, quality of service, name recognition, reputation, location, and associated product offerings. Post-merger, patients in the Gadsden Area would have only CHS's hospitals as meaningful options to obtain GAC services.

15. The Darlington County Area market for the provision and sale of GAC services is highly concentrated, and the Merger will substantially increase concentration in this market. The Merger would combine two of the three competitively meaningful providers of GAC services to commercially insured patients. Respondents CHS and HMA each own and operate a general acute care hospital that serves this area. Respondents compete on a number of price and non-price factors, including a range of

available services, quality of service, name recognition, reputation, location, and associated product offerings. Post-merger, patients in the Darlington County Area would have only two meaningful options for GAC services—either a Respondent-owned hospital or third-party McLeod Regional.

VII. ENTRY CONDITIONS

16. Entry into the relevant geographic markets would not be timely, likely, or sufficient to prevent or deter the likely anticompetitive effects of the Merger. Significant entry barriers include the time and costs associated with constructing or expanding a general acute care hospital, as well as the need to satisfy regulatory and licensing requirements that govern the provision of GAC services, including Certificate of Need requirements.

VIII. EFFECTS OF THE ACQUISITION

17. The Merger, if consummated, may substantially lessen competition for the sale and provision of GAC services to commercial health plans and commercially insured patients in the relevant geographic markets, identified in Paragraphs 10 and 12, in the following ways, among others:

a. by eliminating direct and substantial competition between Respondents CHS and HMA; and

b. by increasing the likelihood that Respondent CHS will unilaterally exercise market power.

18. The ultimate effect of the Merger would be to increase the likelihood that prices of GAC services provided to commercially insured patients would rise above competitive levels, and/or that there would be a decrease in the quality or availability of GAC services, in the relevant geographic markets.

IX. VIOLATIONS CHARGED

19. The agreement described in Paragraph 5 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. §

45, and the Merger, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-first day of January, 2014, issues its Complaint against said Respondents.

By the Commission.

ORDER TO HOLD SEPARATE AND MAINTAIN ASSETS
[Public Record Version]

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of Respondent Health Management Associates, Inc. ("HMA"), by Respondent Community Health Systems, Inc. ("CHS"), (hereinafter referred to as Respondents), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having determined to accept the executed Consent Agreement and to place such Consent Agreement containing the Decision and Order on the public record for a period of thirty (30) days for the receipt and consideration of public comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues the following Order to Hold Separate and Maintain Assets ("Hold Separate Order"):

1. Respondent CHS is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 4000 Meridian Boulevard, Franklin, TN 37067.

2. Respondent HMA is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 5811 Pelican Bay Boulevard, Naples, FL 34108.

3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Hold Separate Order, the following definitions, and all other definitions used in the Consent Agreement and the Decision and Order, shall apply:

A. "Date of the Merger Agreement" means the date the parties entered into the Agreement and Plan of Merger by and among CHS and HMA.

B. "Decision and Order" means the:

1. Proposed Decision and Order contained in the Consent Agreement in this matter until issuance and service of a final Decision and Order by the Commission; and

2. Final Decision and Order issued by the Commission following issuance and service of a final Decision and Order by the Commission.

C. "Hold Separate Business" means the Hospital Services and Outpatient Business of the Divestiture Assets."Hold Separate Employees" means all full-time employees, part-time employees, contract employees, and independent contractors, whose duties, at any time during the ninety (90) days preceding the date the Acquisition is completed or any time after the date the Acquisition is completed, related or relates to the Divestiture Assets, a complete list of whom has been submitted to and approved by the Hold Separate Monitor, in consultation with the Commission staff, no later than three (3) days after the date the Acquisition is completed.

D. "Hold Separate Monitor" means the Person appointed pursuant to Paragraph III. of this Hold Separate Order.

E. "Hold Separate Order" means this Order to Hold Separate and Maintain Assets.

F. "Hold Separate Period" means the period during which the Hold Separate Order is in effect, which shall begin on the date the Acquisition is completed and terminate pursuant to Paragraph XI. of this Hold Separate Order.

G. "Manager" means the Person or Persons appointed pursuant to Paragraph IV. of this Hold Separate Order.

H. "Orders" means the Decision and Order and this Hold Separate Order.

I. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.

J. "Support Service Employees" means the persons listed on Confidential Appendix A of this Hold Separate Order; at any time during the Hold Separate Period, Respondents may, in consultation with the Hold Separate Monitor, modify the list of Support Service Employees on Confidential Appendix A.

K. "Support Services" means assistance with respect to the operation of the Hold Separate Business, including, but not limited to, (i) human resources and administrative services such as payroll processing and employee benefits; (ii) financial accounting services; (iii) reimbursement department support (i.e., Medicare cost reports); (iv) tax-related support; (v) treasury support; (vi) insurance support; (vii) clinical information systems support; (viii) information technology software and support services; (ix) participation in group purchasing arrangements; (x) online training programs; (xi) legal services; and (xii) federal and state regulatory compliance support.

II.

IT IS FURTHER ORDERED that during the Hold Separate Period:

A. Respondents shall:

1. Hold the Hold Separate Business separate, apart, and independent of Respondents' other businesses and assets as required by this Hold Separate Order

and shall vest the Hold Separate Business with all rights, powers, and authority necessary to conduct its business;

2. Not exercise direction or control over, or influence directly or indirectly, the Hold Separate Business or any of its operations, the Managers, or the Hold Separate Monitor, except to the extent that Respondents must exercise direction and control over the Hold Separate Business as is necessary to assure compliance with this Hold Separate Order, the Consent Agreement, the Decision and Order, and all applicable laws; and

3. Take all actions necessary to maintain and assure the continued viability, marketability, and competitiveness of the Hold Separate Business, and prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets, except for ordinary wear and tear, and shall not sell, transfer, encumber, or otherwise impair any of the Divestiture Assets or the Hold Separate Business (except as required by the Decision and Order).

B. The purpose of this Hold Separate Order is to (1) maintain and preserve the Hold Separate Business as a viable, competitive, and ongoing business independent of Respondents until the divestitures required by the Decision and Order are achieved; (2) assure that no Confidential Business Information is exchanged between Respondents and the Hold Separate Business, except in accordance with the provisions of this Hold Separate Order; and (3) prevent interim harm to competition pending the divestiture and other relief.

III.

IT IS FURTHER ORDERED that:

A. The Commission appoints Curtis Lane as Hold Separate Monitor to monitor and supervise the management of the Hold Separate Business and ensure that Respondents comply with their obligations under this Hold Separate Order and the Decision and Order.

B. Respondents shall enter into an agreement with the Hold Separate Monitor that shall become effective no later than one (1) day after the date the Acquisition is completed, and that, subject to the approval of the Commission, transfers to and confers upon the Hold Separate Monitor all rights, powers, and authority necessary to permit the Hold Separate Monitor to perform his or her duties and responsibilities pursuant to this Hold Separate Order in a manner consistent with the purposes of this Hold Separate Order and the Decision and Order and in consultation with Commission staff; and shall require that the Hold Separate Monitor act in a fiduciary capacity for the benefit of the Commission:

1. The Hold Separate Monitor shall have the responsibility for monitoring the organization of the Hold Separate Business; supervising the management of the Hold Separate Business by the Managers; maintaining the independence of the Hold Separate Business; and monitoring Respondents' compliance with their obligations pursuant to this Hold Separate Order and the Decision and Order.

2. The Hold Separate Monitor shall act in a fiduciary capacity for the benefit of the Commission. Subject to all applicable laws and regulations, the Hold Separate Monitor shall have full and complete access to all personnel, books, records, documents, and facilities of the Hold Separate

Business, and to any other relevant information as the Hold Separate Monitor may reasonably request including, but not limited to, all documents and records kept by Respondents in the ordinary course of business that relate to the Hold Separate Business. Respondents shall develop such financial or other information as the Hold Separate Monitor may reasonably request.

3. The Hold Separate Monitor shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Hold Separate Monitor's duties and responsibilities.

4. The Commission may require the Hold Separate Monitor and each of the Hold Separate Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement relating to materials and information received from the Commission in connection with performance of the Hold Separate Monitor's duties.

5. Respondents may require the Hold Separate Monitor and each of the Hold Separate Monitor's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement; *provided, however*, that such agreement shall not restrict the Hold Separate Monitor from providing any information to the Commission.

6. The Hold Separate Monitor shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.

7. Respondents shall indemnify the Hold Separate Monitor and hold him/her harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Hold Separate Monitor's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from the Hold Separate Monitor's malfeasance, gross negligence, willful or wanton acts, or bad faith.

8. Thirty (30) days after the date the Acquisition is completed, and every thirty (30) days thereafter until the Hold Separate Order terminates, the Hold Separate Monitor shall report in writing to the Commission concerning the efforts to accomplish the purposes of this Hold Separate Order and Respondents' compliance with their obligations under the Hold Separate Order and the Decision and Order.

C. If the Hold Separate Monitor ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, the Commission may appoint a substitute Hold Separate Monitor, subject to the consent of Respondents, which consent shall not be unreasonably withheld, as follows:

1. If Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Hold Separate Monitor within five (5) business days after notice by the staff of the Commission to Respondents of the identity of the proposed substitute Hold Separate Monitor, then Respondents shall be deemed to have consented to the selection of the proposed substitute Monitor.

2. Respondents shall, no later than five (5) days after the Commission appoints a substitute Hold Separate Monitor, enter into an agreement with the substitute Hold Separate Monitor that, subject to the approval of the Commission, confers on the substitute Hold Separate Monitor all the rights, powers, and authority necessary to permit the substitute Hold Separate Monitor to perform his or her duties and responsibilities on the same terms and conditions as provided in Paragraph III. of this Hold Separate Order.

D. The Hold Separate Monitor shall serve through the Hold Separate Period; *provided, however,* that the Commission may extend or modify this period as may be necessary or appropriate to accomplish the purposes of the Orders.

E. The Commission may on its own initiative or at the request of the Hold Separate Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of this Hold Separate Order.

IV.

IT IS FURTHER ORDERED that:

A. No later than three (3) days after the date the Acquisition is completed, Respondents shall appoint Jim Edmondson as the Manager of Riverview Regional Medical Center and Tim Browne as the Manager of Carolina Pines Regional Medical Center, to manage and maintain the operations of the Hold Separate Business in the regular and ordinary course of business and in accordance with past practice.

B. Respondents shall enter into a management agreement with each of the Managers that shall become effective no later than three (3) days after the date the Acquisition is completed, and that, subject to the

approval of the Hold Separate Monitor, in consultation with the Commission staff, transfers all rights, powers, and authority necessary to permit each Manager to perform his or her duties and responsibilities pursuant to this Hold Separate Order:

1. The Managers shall be responsible for managing the operations of the Hold Separate Business and shall report directly and exclusively to the Hold Separate Monitor and shall manage the Hold Separate Business independently of the management of Respondents and Respondents' other businesses.

2. The Managers shall make no material changes in the ongoing operations of the Hold Separate Business except with the approval of the Hold Separate Monitor, in consultation with the Commission staff.

3. The Managers, in consultation with the Hold Separate Monitor, shall have the authority to employ such Persons as are reasonably necessary to assist the Managers in managing the Hold Separate Business, including consultants, accountants, attorneys, and other representatives and assistants. Nothing contained herein shall preclude the Managers from contacting or communicating directly with the staff of the Commission either at the request of the staff of the Commission or in the discretion of the Manager.

4. Respondents shall provide the Managers with reasonable financial incentives to undertake this position. Such incentives shall include a continuation of all employee benefits, including regularly scheduled raises, bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the Hold Separate Business's viability,

marketability, and competitiveness, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.

5. The Managers shall serve, without bond or other security, at the cost and expense of Respondents, on reasonable and customary terms commensurate with the person's experience and responsibilities.

6. Respondents shall indemnify the Managers and hold them harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Managers' duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense, of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from either Manager's malfeasance, gross negligence, willful or wanton acts, or bad faith.

C. The Managers shall have the authority, in consultation with the Hold Separate Monitor, to staff the Hold Separate Business with sufficient employees to maintain the viability and competitiveness of the Hold Separate Business, including:

1. Replacing any departing or departed employee with a person who has similar experience and expertise or determine not to replace such departing or departed employees;

2. Removing any Hold Separate Employee who ceases to act or fails to act diligently and consistent with the purposes of this Hold Separate Order, and replacing such employee with another person of similar experience or skills;

3. Ensuring that no Hold Separate Employee shall (i) be involved in any way in the operations of

Respondents' other businesses, (ii) receive or have access to, or use or continue to use, any Confidential Business Information pertaining to Respondents' other businesses, and (iii) provide or permit access to Confidential Business Information pertaining to the Hold Separate Business to Respondents' employees, except as provided in Paragraph VI. below;

4. Providing each Hold Separate Employee with reasonable financial incentives, including continuation of all employee benefits and regularly scheduled raises and bonuses, to continue in his or her position pending divestiture of the Divestiture Assets.

D. Either or both Managers may be removed for cause by the Hold Separate Monitor, in consultation with the Commission staff. If a Manager is removed, resigns, or otherwise ceases to act as Manager, Respondents shall, within three (3) days of such action, subject to the approval of the Hold Separate Monitor and in consultation with Commission staff, on the same terms and conditions as provided in this Hold Separate Order, (i) appoint a substitute Manager, and (ii) enter into an agreement with the substitute Manager.

V.

IT IS FURTHER ORDERED that:

A. Respondents shall cooperate with, and take no action to interfere with or impede the ability of: (i) the Hold Separate Monitor, (ii) the Managers, (iii) any Hold Separate Employee, or (iv) any Support Services Employee, to perform his or her duties and responsibilities consistent with the terms of this Hold Separate Order and the Decision and Order.

B. Respondents shall continue to provide, or offer to provide, Support Services and goods to the Hold

Separate Business as were being provided to the Hold Separate Business by Respondents as of the Date of the Merger Agreement;

1. For Support Services and goods that Respondents provided to the Hold Separate Business as of the Date of the Merger Agreement, Respondents may charge no more than the same price, if any, charged by Respondents for such Support Services and goods as of the Date of the Merger Agreement;

2. For any other Support Services and goods that Respondents may provide to the Hold Separate Business, Respondents may charge no more than Respondents' Direct Cost for the same or similar Support Services; and

3. Notwithstanding the above, the Hold Separate Business shall have, at the option of the Managers and in consultation with the Hold Separate Monitor, the ability to acquire Support Services from Third Parties.

C. Respondents shall not permit:

1. Any of its employees, officers, agents, or directors, other than (i) the Managers, (ii) any Hold Separate Employees, and (iii) any Support Services Employees, to be involved in the operations of the Hold Separate Business, except to the extent otherwise provided in this Hold Separate Order.

2. The Managers or any Hold Separate Employee to be involved, in any way, in the operations of Respondents' businesses other than the Hold Separate Business.

D. Respondents shall provide the Hold Separate Business with sufficient financial and other resources as are appropriate in the judgment of the Hold Separate

Monitor, consistent with his obligations and responsibilities in this Hold Separate Order, to:

1. Operate the Hold Separate Business as it was operated as of the Date of the Merger Agreement (including efforts to generate new business) consistent with the practices of the Hold Separate Business in place prior to the Date of the Merger Agreement;

2. Perform all maintenance to, and replacements or remodeling of, the assets of the Hold Separate Business in the ordinary course of business and in accordance with past practice and with current plans;

3. Carry on such capital projects, physical plant improvements, and business plans as are already under way or planned for which all necessary regulatory and legal approvals have been obtained, including, but not limited to, existing or planned renovation, remodeling, and expansion projects; and

4. Maintain the viability, competitiveness, and marketability of the Hold Separate Business.

Such financial resources to be provided to the Hold Separate Business shall include, but shall not be limited to, (i) general funds, (ii) capital, (iii) working capital, and (iv) reimbursement for any operating losses, capital losses, or other losses; *provided, however,* that, consistent with the purposes of the Decision and Order and in consultation with the Hold Separate Monitor, the Managers may reduce in scale or pace any capital or research and development project of the Hold Separate Business, or substitute any capital or research and development project of the Hold Separate Business for another of the same cost.

E. Respondents shall provide each Hold Separate Employee with reasonable financial incentives to continue in his or her position consistent with past practices and/or as may be necessary to preserve the marketability, viability, and competitiveness of the Divestiture Assets pending divestiture. Such incentives shall include a continuation of all employee benefits, including funding of regularly scheduled raises and bonuses, vesting of pension benefits (as permitted by law), and additional incentives as may be necessary to assure the continuation, and prevent any diminution, of the viability, marketability, and competitiveness of the Hold Separate Business until the Closing Date, and as may otherwise be necessary to achieve the purposes of this Hold Separate Order.

F. No later than ten (10) days after the date the Acquisition is completed, Respondents shall establish and implement procedures, subject to the approval of the Hold Separate Monitor, covering the management, maintenance, and independence of the Hold Separate Business consistent with the provisions of this Hold Separate Order.

G. No later than ten (10) days after the date the Acquisition is completed, Respondents shall circulate to Hold Separate Employees and to persons who are employed in Respondents' businesses that compete with the Hold Separate Business in the Relevant Areas, a notice of the requirements of this Hold Separate Order, the Decision and Order, and the Consent Agreement, in a form approved by the Hold Separate Monitor in consultation with Commission staff, including copies of the Hold Separate Order and the Decision and Order.

VI.

IT IS FURTHER ORDERED that:

A. After the date the Acquisition is completed, Respondents' employees, other than employees of the Hold Separate Business and Support Services Employees, shall not receive, or have access to, or use or continue to use any Confidential Business Information of the Hold Separate Business except in the course of:

1. Performing their obligations or as permitted under this Hold Separate Order or the Decision and Order;

2. Performing their obligations under the Divestiture Agreements;

3. Negotiating agreements to divest assets pursuant to the Decision and Order and engaging in related due diligence; and

4. Complying with financial reporting requirements, obtaining legal advice, defending legal claims, conducting investigations, or enforcing actions threatened or brought against the Hold Separate Business, or as required by law. Notwithstanding the above, Respondents may receive aggregate financial and operational information relating to the Hold Separate Business only to the extent necessary to allow Respondents to comply with the requirements and obligations of the laws and regulations of the United States and other countries, to prepare consolidated financial reports, tax returns, reports required by securities laws, and personnel reports, and to comply with this Hold Separate Order or in complying with or as permitted by the Decision and Order. Any such information that is obtained pursuant to this

subparagraph shall be used only for the purposes set forth in this Hold Separate Order.

For purposes of this Paragraph VI.A., Respondents' employees that provide Support Services or that staff the Hold Separate Business shall be deemed to be performing obligations under this Hold Separate Order.

B. If access to or disclosure of Confidential Business Information of the Hold Separate Business to Respondents' employees is necessary and permitted under Paragraph VI.A. of this Hold Separate Order, Respondents shall:

1. Implement and maintain a process and procedures, as approved by the Hold Separate Monitor, such approval not to be unreasonably withheld, pursuant to which Confidential Business Information of the Hold Separate Business may be disclosed or used only:

   a. to or by those employees who require such information;

   b. to the extent such Confidential Business Information is required; and

   c. after such employees have signed an appropriate agreement in writing to maintain the confidentiality of such information.

2. Enforce the terms of this Paragraph VI. as to any of Respondents' employees and take such action as is necessary to cause each such employee to comply with the terms of this Paragraph VI., including training of Respondents' employees and taking all other actions that Respondents would take to protect their own trade secrets and proprietary information.

C. Respondents shall implement, and maintain in operation, a system, as approved by the Hold Separate Monitor, of access and data controls to prevent unauthorized access to or dissemination of Confidential Business Information of the Hold Separate Business, including, but not limited to, the opportunity by the Hold Separate Monitor, on terms and conditions agreed to with Respondents, to audit Respondents' networks and systems to verify compliance with this Hold Separate Order.

D. Neither the Managers nor any Hold Separate Employee shall receive or have access to, or use or continue to use, any Confidential Business Information relating to Respondents' businesses (not subject to the Hold Separate Order), except such information as is necessary to maintain and operate the Hold Separate Business.

VII.

IT IS FURTHER ORDERED that Respondents shall:

A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Relevant Employee, as and to the extent permitted by law:

1. Name, job title or position, date of hire, and effective service date;

2. A specific description of the employee's responsibilities;

3. The base salary or current wages;

4. The most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;

5. Employment status (i.e., active or on leave or disability; full-time or part-time);

6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

7. At the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.

B. Within a reasonable time after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees;

C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Prospective Acquirer; *provided, however,* that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or

2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; provided further, however, that this Paragraph shall not prohibit

Respondents from making offers of employment to or employing any Relevant Employee if the Prospective Acquirer has notified Respondents in writing that the Prospective Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer;

D. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

E. Not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with the Acquirer to terminate his or her employment with the Acquirer; *provided*, *however*, that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or

2. Hire Relevant Employees who apply for employment with Respondents, as long as such

employees were not solicited by Respondents in violation of this Paragraph; *provided further, however,* that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

VIII.

IT IS FURTHER ORDERED that, within thirty (30) days after this Hold Separate Order becomes final, and every thirty (30) days thereafter until this Hold Separate Order terminates, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with all provisions of this Hold Separate Order. Respondents shall include in their reports, among other things that are required from time to time, a full description of the efforts being made to comply with this Hold Separate Order.

IX.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of such Respondent;

B. Any proposed acquisition, merger, or consolidation of such Respondent; and

C. Any other change in such Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Hold Separate Order.

X.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Hold Separate Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to its principal United States offices, registered office of its United States subsidiary, or headquarters address, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and all other records and documents in the possession or under the control of such Respondent related to compliance with this Hold Separate Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and

B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Hold Separate Order.

XI.

IT IS FURTHER ORDERED that this Hold Separate Order shall terminate at the earlier of:

A. Three (3) business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34; or

B. The day after the last of the divestitures required by the Decision and Order is completed; *provided, however,* that when the Divestiture Assets that are

included within the Hold Separate Business are divested pursuant to the applicable paragraphs in the Decision and Order, those Divestiture Assets shall cease to be covered by this Hold Separate Order.

By the Commission.

Confidential Appendix A

List of Respondents' Support Service Employees

[Redacted From the Public Record Version, But Incorporated By Reference]

DECISION AND ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of the proposed acquisition of Respondent Health Management Associates, Inc. ("HMA"), by Respondent Community Health Systems, Inc. ("CHS"), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Orders ("Consent Agreement"), containing an admission by

Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts and that a Complaint should issue stating its charges in that respect, and having thereupon issued its Complaint and Order to Hold Separate and Maintain Assets and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comment filed by an interested person, pursuant to Commission Rule 2.34, 16 C.F.R. § 2.34, now in further conformity with the procedure described in Commission Rule 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order ("Order"):

1. Respondent CHS is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 4000 Meridian Boulevard, Franklin, TN 37067.

2. Respondent HMA is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 5811 Pelican Bay Boulevard, Naples, FL 34108.

3. The Federal Trade Commission has jurisdiction over the subject matter of this proceeding and of Respondents, and this proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, as used in this Order, the following definitions shall apply:

A. "CHS" means Community Health Systems, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by CHS, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each. After the date the Acquisition is completed, "CHS" includes HMA.

B. "HMA" means Health Management Associates, Inc., its directors, officers, employees, agents, representatives, successors, and assigns; and its joint ventures, subsidiaries, divisions, groups, and affiliates controlled by HMA, and the respective directors, officers, employees, agents, representatives, successors, and assigns of each.

C. "Acquirer" means each Person approved by the Commission to acquire the Divestiture Assets pursuant to this Order.

D. "Acquisition" means the acquisition described in and contemplated by the Agreement and Plan of Merger by and among CHS and HMA, dated July 29, 2013.

E. "Acute Care Hospital" means a health-care facility licensed as a hospital, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, and that provides General Acute Care Inpatient Hospital Services.

F. "Business Records" means all information, books and records, documents, files, correspondence, manuals, computer printouts, databases, and other documents, including all hard copies and electronic records wherever stored, including without limitation, client and customer lists, patient and payor information, referral sources, research and development reports, production reports, service and warranty records, maintenance logs, equipment logs, operating guides and manuals, documents relating to policies and procedures, financial and accounting records and documents, creative materials, advertising materials, promotional materials, studies, reports, correspondence, financial statements, financial plans and forecasts, operating plans, price lists, cost information, supplier and vendor contracts, marketing analyses, customer lists, customer contracts, employee lists and contracts, salaries and benefits information, physician lists and contracts, supplier lists and contracts, and, subject to legal requirements, copies of all personnel files.

G. "Carolina Pines Assets" means all of Respondents' rights, title, and interest in all property and assets, tangible or intangible, of whatever nature and wherever located, relating to or used in connection with the Hospital Services and Outpatient Business of the Carolina Pines Regional Medical Center and all Carolina Pines Outpatient Facilities, including, without limitation, all:

1. Real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee), wherever located, including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. Tangible Personal Property, including, without limitation, any Tangible Personal Property

removed from and not replaced at the Carolina Pines Regional Medical Center and all Carolina Pines Outpatient Facilities, if such property was used by or in connection with the Hospital Services and Outpatient Business of the Carolina Pines Regional Medical Center or any Carolina Pines Outpatient Facilities on or after July 29, 2013;

3. Rights under any and all contracts and agreements (e.g., leases, service agreements such as dietary and housekeeping services, supply agreements, procurement contracts), including, but not limited to, contracts and agreements with physicians, other health care providers, unions, third-party payors, health maintenance organizations ("HMOs"), customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees;

4. Rights and title in and to use the name of the Carolina Pines Regional Medical Center and all Carolina Pines Outpatient Facilities on a permanent and exclusive basis (even as to Respondents);

5. Medicare and Medicaid provider numbers for the Carolina Pines Regional Medical Center and all Carolina Pines Outpatient Facilities, to the extent transferable;

6. Intellectual Property;

7. Intangible rights and property other than Intellectual Property, including, going concern value, goodwill, internet, telecopy and telephone numbers, domain names, listings, and web sites;

8. Approvals, consents, licenses, certificates, registrations, permits, waivers, or other authorizations issued, granted, given, or otherwise

made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;

9. All consumable or disposable inventory, including, but not limited to, janitorial, office, and medical supplies, and at least thirty (30) treatment days of pharmaceuticals;

10. Accounts receivable;

11. Items of prepaid expense;

12. Rights under warranties and guarantees, express or implied; and

13. Business Records;

provided, *however*, that Respondents may retain a copy of Business Records to the extent necessary to comply with applicable law, regulations, and other legal requirements.

H. "Carolina Pines Outpatient Facilities" means:

1. Carolina Pines Regional Medical Center Sleep Center;

2. All facilities or entities providing Outpatient Services that are owned or controlled by Hartsville HMS Physician Management, LLC, including, but not limited to, The Medical Group, Pee Dee Hospitalists, Pee Dee Weight Loss Clinic, The Children's Group, and Children's Care Clinic;

3. All facilities or entities providing Outpatient Services that are owned or controlled by Hartsville Medical Group, LLC, including, but not limited to, Hartsville Cardiology Associates, Hartsville Nephrology, Hartsville Nephrology and

Endocrinology, Hartsville Orthopedics & Sports Medicine, The Children's Group, The Medical Group, The Medical Group Darlington, The Medical Group Swift Creek, and Women's Care of Hartsville; and

4. All other entities or facilities providing Outpatient Services relating to Carolina Pines Regional Medical Center.

I. "Carolina Pines Regional Medical Center" means the Acute Care Hospital located at 1304 West Bobo Newsom Highway, Hartsville, SC 29550.

J. "Closing Date" means the applicable date on which each divestiture required by this Order is completed.

K. "Commission" means the Federal Trade Commission.

L. "Confidential Business Information" means information not in the public domain that is related to or used in connection with the Hospital Services and Outpatient Business, except for any information that was or becomes generally available to the public other than as a result of disclosure by Respondents, and includes, but is not limited to, pricing information, marketing methods, market intelligence, competitor information, commercial information, management system information, business processes and practices, payor and provider communications and information, bidding practices and information, procurement practices and information, supplier qualification and approval practices and information, and training practices.

M. "Direct Cost" means cost not to exceed the cost of labor, material, travel, and other expenditures to the extent the costs are directly incurred to provide Transitional Services. "Direct Cost" to an Acquirer for its use of any of Respondents' employees' labor

shall not exceed the then-current average wage rate for such employee, including benefits.

N. "Divestiture Agreement" means each agreement between Respondents and each Acquirer (or between a Divestiture Trustee and the Acquirer, if applicable), and all amendments, exhibits, attachments, agreements, and schedules thereto, approved by the Commission, and pursuant to which the Divestiture Assets are divested as required by this Order.

O. "Divestiture Assets" means:

1. Carolina Pines Assets, and

2. Riverview Assets.

P. "General Acute Care Inpatient Hospital Services" means a broad cluster of basic medical and surgical diagnostic and treatment services, provided on a 24-hour in-patient basis, for the medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities, that include an overnight stay in the hospital by the patient. "General Acute Care Inpatient Hospital Services" excludes: (i) services at hospitals that serve solely military personnel and veterans; (ii) services at outpatient facilities that provide same-day service only; and (iii) psychiatric, substance abuse, and rehabilitation services.

Q. "Hospital Services and Outpatient Business" means the operation of, and all activities relating to, the:

1. Business of an Acute Care Hospital, which includes the provision of General Acute Care Inpatient Hospital Services; and

2. Business of providing Outpatient Services, whether provided or performed at the Acute Care Hospital or in a different location.

R. "Hold Separate Order" means the Order to Hold Separate and Maintain Assets issued by the Commission in this matter.

S. "Intellectual Property" means, without limitation, all:

1. Patents, patent applications, and inventions and discoveries that may be patentable;

2. Know-how, trade secrets, software, technical information, data, registrations, applications for governmental approvals, inventions, processes, best practices (including clinical pathways), formulae, protocols, standards, methods, techniques, designs, quality control practices and information, research and test procedures and information, and safety, environmental and health practices and information;

3. Confidential or proprietary information, commercial information, management systems, business processes and practices, customer lists, customer information, customer records and files, customer communications, procurement practices and information, supplier qualification and approval practices and information, training materials, sales and marketing materials, customer support materials, advertising and promotional materials; and

4. Rights in any jurisdiction to limit the use or disclosure of any of the foregoing, and rights to sue and recover damages or obtain injunctive relief for infringement, dilution, misappropriation, violation, or breach of any of the foregoing.

T. "Outpatient Services" means a broad cluster of basic medical and surgical diagnostic and treatment services for the medical diagnosis, treatment, and care of physically injured or sick persons with short term or episodic health problems or infirmities, that does not

include an overnight stay and/or admission as an inpatient in the hospital by the patient.

U. "Person" means any individual, partnership, firm, corporation, association, trust, unincorporated organization, or other entity or governmental body.

V. "Prospective Acquirer" means a Person with whom Respondents (or the Divestiture Trustee, if applicable) have signed a Divestiture Agreement pursuant to Paragraphs II. or III. of this Order (or Paragraph VII. of this Order, if applicable).

W. "Relevant Area" means, as defined by the U.S. Office of Management and Budget, the:

1. Gadsden, Alabama, Metropolitan Statistical Area; or

2. Florence, South Carolina, Metropolitan Statistical Area.

X. "Relevant Employees" means any and all full-time employees, part-time employees, contract employees, or independent contractors whose duties, at any time during the ninety (90) days preceding the date the Acquisition is completed or at any time after the date the Acquisition is completed, related or relate to the Divestiture Assets.

Y. "Respondents" means CHS and HMA, collectively or individually.

Z. "Riverview Assets" means all of Respondents' rights, title, and interest in all property and assets, tangible or intangible, of whatever nature and wherever located, relating to or used in connection with Hospital Services and Outpatient Business of Riverview Regional Medical Center and all Riverview Outpatient Facilities, including, without limitation, all:

1. Real property interests (including fee simple interests and real property leasehold interests, whether as lessor or lessee) wherever located, including all easements, appurtenances, licenses, and permits, together with all buildings and other structures, facilities, and improvements located thereon, owned, leased, or otherwise held;

2. Tangible Personal Property, including, without limitation, any Tangible Personal Property removed from and not replaced at the Riverview Regional Medical Center and all Riverview Outpatient Facilities, if such property was used by or in connection with the Hospital Services and Outpatient Business of the Riverview Regional Medical Center or any Riverview Outpatient Facilities on or after July 29, 2013;

3. Rights under any and all contracts and agreements (e.g., leases, service agreements such as dietary and housekeeping services, supply agreements, procurement contracts), including, but not limited to, contracts and agreements with physicians, other health care providers, unions, third-party payors, HMOs, customers, suppliers, sales representatives, distributors, agents, personal property lessors, personal property lessees, licensors, licensees, cosigners, and consignees;

4. Rights and title in and to use the name of the Riverview Regional Medical Center and all Riverview Outpatient Facilities on a permanent and exclusive basis (even as to Respondents);

5. Medicare and Medicaid provider numbers for Riverview Regional Medical Center and all Riverview Outpatient Facilities, to the extent transferable;

6. Intellectual Property;

7. Intangible rights and property other than Intellectual Property, including, going concern value, goodwill, internet, telecopy and telephone numbers, domain names, listings, and web sites;

8. Approvals, consents, licenses, certificates, registrations, permits, waivers, or other authorizations issued, granted, given, or otherwise made available by or under the authority of any governmental body or pursuant to any legal requirement, and all pending applications therefore or renewals thereof, to the extent assignable;

9. Consumable or disposable inventory, including, but not limited to, janitorial, office, and medical supplies, and at least thirty (30) treatment days of pharmaceuticals;

10. Accounts receivable;

11. Items of prepaid expense;

12. Rights under warranties and guarantees, express or implied; and

13. Business Records;

provided, *however*, that Respondents may retain a copy of Business Records to the extent necessary to comply with applicable law, regulations, and other legal requirements.

AA. "Riverview Outpatient Facilities" means:

1. Gadsden Endoscopy Center;

2. Riverview Imaging & Laboratory Center;

3. Riverview Laboratory Bay Street;

4. Riverview Medical Center Laboratory;

5. Wound Care and Hyperbaric Center;

6. All facilities or entities providing Outpatient Services that are owned or controlled by Gadsden HMA Physician Management LLC, including, but not limited to, Primary Care Associates and Specialty Care Associates; and

7. All other entities or facilities providing Outpatient Services relating to Riverview Regional Medical Center.

BB. "Riverview Regional Medical Center" means the Acute Care Hospital located at 600 South 3rd Street, Gadsden, Alabama 35901.

CC. "Tangible Personal Property" means all machinery, equipment, spare parts, tools and tooling, fixtures, vehicles, furniture, inventories, office equipment, computer hardware, supplies and materials, and all other items of tangible personal property of every kind owned or leased by Respondents, wherever located, together with any express or implied warranty by the manufacturers, sellers, or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

DD. "Third Parties" means Persons other than Respondents or the Acquirer(s).

EE. "Transitional Administrative Services" means administrative assistance with respect to the Hospital Services and Outpatient Business, including, but not limited to, assistance relating to billing, accounting, governmental regulation, human resources management, information systems, managed care contracting, and purchasing, as well as providing assistance in acquiring, obtaining access, and customizing all software used in the provision of such services.

FF. "Transitional Clinical Services" means clinical assistance and support services with respect to the Hospital Services and Outpatient Business.

GG. "Transitional Services" means Transitional Administrative Services and Transitional Clinical Services.

II.

IT IS FURTHER ORDERED that:

A. No later than six (6) months after the date this Order is issued, Respondents shall divest the Carolina Pines Assets, absolutely and in good faith and at no minimum price, as an on-going business, only to an acquirer that receives the prior approval of the Commission, and only in a manner (including a Divestiture Agreement) that receives the prior approval of the Commission.

B. Respondents shall cooperate with the Acquirer to ensure that the Carolina Pines Assets are transferred to the Acquirer as a financially and competitively viable Hospital Services and Outpatient Business, operating as an ongoing Hospital Services and Outpatient Business, including, but not limited to, providing assistance necessary to transfer to the Acquirer all governmental approvals needed to operate the Carolina Pines Assets.

C. Prior to the Closing Date, Respondents shall:

1. Secure all consents and waivers from all Third Parties that are necessary for Respondents to divest the Carolina Pines Assets and/or to grant any license(s) to the Acquirer to permit the Acquirer to operate the Carolina Pines Assets; *provided, however*, that Respondents may satisfy this requirement by certifying that such Acquirer has

executed all such agreements directly with each of the relevant Third Parties; and

2. Take all actions necessary to ensure that the Carolina Pines Assets meet federal, state, local, and municipal requirements necessary to allow the transfer of the Carolina Pines Assets to the Acquirer.

D. The purpose of the divestiture is to ensure the continuation of the Carolina Pines Regional Medical Center as an ongoing, viable Acute Care Hospital providing General Acute Care Inpatient Hospital Services and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

III.

IT IS FURTHER ORDERED that:

A. No later than six (6) months after the date this Order is issued, Respondents shall divest the Riverview Assets, absolutely and in good faith and at no minimum price, as an on-going business, only to an acquirer that receives the prior approval of the Commission, and only in a manner (including a Divestiture Agreement) that receives the prior approval of the Commission.

B. Respondents shall cooperate with the Acquirer to ensure that the Riverview Assets are transferred to the Acquirer as a financially and competitively viable Hospital Services and Outpatient Business, operating as an ongoing Hospital Services and Outpatient Business, including, but not limited to, providing assistance necessary to transfer to the Acquirer all governmental approvals needed to operate the Riverview Assets.

C. Prior to the Closing Date, Respondents shall:

1. Secure all consents and waivers from all Third Parties that are necessary for Respondents to divest the Riverview Assets and/or to grant any license(s) to the Acquirer to permit the Acquirer to operate the Riverview Assets; *provided, however*, that Respondents may satisfy this requirement by certifying that such Acquirer has executed all such agreements directly with each of the relevant Third Parties; and

2. Take all actions necessary to ensure that the Riverview Assets meet federal, state, local, and municipal requirements necessary to allow the transfer of the Riverview Assets to the Acquirer.

D. The purpose of the divestiture is to ensure the continuation of the Riverview Regional Medical Center as an ongoing, viable Acute Care Hospital providing General Acute Care Inpatient Hospital Services and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV.

IT IS FURTHER ORDERED that:

A. After the date the Acquisition is completed, Respondents shall not use, solicit, or access, directly or indirectly, any Confidential Business Information of the Divestiture Assets, and shall not disclose, provide, discuss, exchange, circulate, convey, or otherwise furnish such Confidential Business Information, directly or indirectly, to or with any Person other than:

1. As necessary to comply with the requirements of this Order or the Hold Separate Order;

2. Pursuant to a Divestiture Agreement;

3. To enforce the terms of a Divestiture Agreement or prosecute or defend against any dispute or legal proceeding; or

4. To comply with applicable law, regulations and other legal requirements.

B. No later than five (5) days after the date the Acquisition is completed, Respondents shall provide written notification of the restrictions, prohibitions, and requirements of this Paragraph IV. to all of Respondents' employees, agents, and representatives employed at, or with responsibilities relating to, the Divestiture Assets, or who had or have access to or possession, custody, or control of any Confidential Business Information of the Divestiture Assets:

1. Such notification shall include a plain language explanation of the requirements of this Order and a description of the consequences of failing to comply with the requirements.

2. Respondents shall provide such notification by US mail or by e-mail, with return receipt requested acknowledging receipt of the notification or similar transmission.

3. Respondents shall maintain complete records of all such notifications at Respondents' corporate headquarters and keep a file of all receipts and acknowledgments for one (1) year after the Closing Date.

4. Respondents shall provide the Acquirer (and the Hold Separate Trustee, if one is appointed) with a copy of such notification and with copies of all other certifications, notifications, and reminders sent to Respondents' personnel.

C. Not later than thirty (30) days after the date the Acquisition is completed, Respondents shall:

1. Obtain, as a condition of continued employment post-divestiture, from each of Respondents' employees, agents, and representatives employed at or with responsibilities relating to the Divestiture Assets or who had or have access to or possession, custody, or control of any Confidential Business Information of the Divestiture Assets an executed confidentiality agreement that complies with the restrictions, prohibitions and requirements of this Order and the Hold Separate Order; and

2. Institute procedures and requirements and take such actions as are necessary to ensure that Respondents' personnel comply with the restrictions, prohibitions and requirements of this Paragraph IV., including all actions that Respondents would take to protect their own trade secrets and confidential information.

V.

IT IS FURTHER ORDERED that Respondents shall:

A. No later than ten (10) days after a request from a Prospective Acquirer, provide the Prospective Acquirer with the following information for each Relevant Employee, as and to the extent permitted by law:

1. Name, job title or position, date of hire, and effective service date;

2. Specific description of the employee's responsibilities;

3. The base salary or current wages;

4. Most recent bonus paid, aggregate annual compensation for Respondents' last fiscal year, and current target or guaranteed bonus, if any;

5. Employment status (i.e., active or on leave or disability; full-time or part-time);

6. Any other material terms and conditions of employment in regard to such employee that are not otherwise generally available to similarly situated employees; and

7. At the Prospective Acquirer's option, copies of all employee benefit plans and summary plan descriptions (if any) applicable to the Relevant Employee.

B. Within a reasonable time after a request from a Prospective Acquirer, provide to the Prospective Acquirer an opportunity to meet personally and outside the presence or hearing of any employee or agent of any Respondent, with any one or more of the Relevant Employees, and to make offers of employment to any one or more of the Relevant Employees.

C. Not interfere, directly or indirectly, with the hiring or employing by the Prospective Acquirer of any Relevant Employees, not offer any incentive to such employees to decline employment with the Prospective Acquirer, and not otherwise interfere with the recruitment of any Relevant Employee by the Prospective Acquirer; *provided, however,* that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or

2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph; *provided further,*

however, that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Prospective Acquirer has notified Respondents in writing that the Prospective Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

D. Remove any impediments within the control of Respondents that may deter Relevant Employees from accepting employment with the Prospective Acquirer, including, but not limited to, removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Prospective Acquirer, and shall not make any counteroffer to a Relevant Employee who receives a written offer of employment from the Prospective Acquirer; *provided, however*, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee.

E. Provide all Relevant Employees with reasonable financial incentives to continue in their positions until the Closing Date. Such incentives shall include, but are not limited to, a continuation, until the Closing Date, of all employee benefits, including the funding of regularly scheduled raises and bonuses, and the vesting of pension benefits (as permitted by law and for those Relevant Employees covered by a pension plan), offered by Respondents.

F. Not, for a period of one (1) year following the Closing Date, directly or indirectly, solicit or otherwise attempt to induce any of the Relevant Employees who have accepted offers of employment with the Acquirer to

terminate his or her employment with the Acquirer; *provided, however,* that Respondents may:

1. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at Relevant Employees; or

2. Hire Relevant Employees who apply for employment with Respondents, as long as such employees were not solicited by Respondents in violation of this Paragraph V.; *provided further, however,* that this Paragraph shall not prohibit Respondents from making offers of employment to or employing any Relevant Employee if the Acquirer has notified Respondents in writing that the Acquirer does not intend to make an offer of employment to that employee, or where such an offer has been made and the employee has declined the offer, or where the employee's employment has been terminated by the Acquirer.

VI.

IT IS FURTHER ORDERED that, at the request of an Acquirer, for a period not to exceed twelve (12) months, or as otherwise approved by the Commission, and in a manner (including pursuant to an agreement) that receives the prior approval of the Commission:

A. Respondents shall provide Transitional Services to the Acquirer sufficient to enable the Acquirer to operate the Divestiture Assets, as applicable, and to provide General Acute Care Inpatient Hospital Services and Outpatient Services in substantially the same manner that Respondents have operated such facility and provided such services at the Divestiture Assets, as applicable; and

B. Respondents shall provide the Transitional Services required by this Paragraph at substantially the same level and quality as such services are provided by Respondents in connection with the General Acute Care Inpatient Hospital Services and Outpatient Services provided at the Divestiture Assets, as applicable.

Provided, however, that Respondents shall not (i) require the Acquirer to pay compensation for Transitional Services that exceeds the Direct Cost of providing such goods and services, or (ii) terminate its obligation to provide Transitional Services because of a material breach by the Acquirer of any agreement to provide such assistance unless Respondents are unable to provide such services due to such material breach.

VII.

IT IS FURTHER ORDERED that:

A. If Respondents have not fully complied with the obligations imposed by Paragraphs II. or III. of this Order, the Commission may appoint a Divestiture Trustee to divest any remaining Divestiture Assets and perform Respondents' other obligations in a manner that satisfies the requirements of this Order. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. § 45(*l*), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to divest the required assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII.A. shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to Section 5(*l*) of the Federal Trade Commission Act, or any other statute

enforced by the Commission, for any failure by Respondents to comply with this Order.

B. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, and stated in writing their reasons for opposing, the selection of any proposed Divestiture Trustee within ten (10) days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.

C. Not later than ten (10) days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.

D. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Paragraph, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:

1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to effectuate the divestitures required by, and satisfy the additional obligations imposed by, this Order.

2. The Divestiture Trustee shall have one (1) year after the date the Commission approves the trust agreement described herein to effectuate the required divestitures, which shall be subject to the

prior approval of the Commission. If, however, at the end of the one (1) year period, the Divestiture Trustee has submitted a plan to divest, or believes the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed Divestiture Trustee, by the court; *provided, however,* the Commission may extend the divestiture period only two (2) times.

3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be divested by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to interfere with or impede the Divestiture Trustee's accomplishment of the divestiture. Any delays caused by Respondents shall extend the time for divestiture under this Paragraph VII. for a time period equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court.

4. The Divestiture Trustee shall use commercially reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. Each divestiture shall be made in the manner and to an Acquirer as required by this Order; *provided, however,* if the Divestiture Trustee receives bona fide offers from more than one acquiring Person, and if the Commission determines to approve more than one such

acquiring Person, the Divestiture Trustee shall divest to the acquiring Person selected by Respondents from among those approved by the Commission; *provided further*, *however*, that Respondents shall select such Person within five (5) days after receiving notification of the Commission's approval.

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order.

6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether

or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence, malfeasance, willful or wanton acts, or bad faith by the Divestiture Trustee.

7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the relevant assets required to be divested by this Order.

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every thirty (30) days concerning the Divestiture Trustee's efforts to accomplish the divestiture.

9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement; *provided, however*, such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.

10. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, representatives, and assistants to sign an appropriate confidentiality agreement relating to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties and responsibilities.

E. If the Commission determines that the Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Paragraph VII.

F. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee

issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures required by this Order.

G. The Divestiture Trustee appointed pursuant to this Paragraph VII. may be the same person appointed as Hold Separate Trustee pursuant to the relevant provisions of the Hold Separate Order.

VIII.

IT IS FURTHER ORDERED that:

A. No Divestiture Agreement shall limit or contradict, or be construed to limit or contradict, the terms of this Order, it being understood that nothing in this Order shall be construed to reduce any rights or benefits of any Acquirer or to reduce any obligations of Respondents under such agreements.

B. Each Divestiture Agreement shall be incorporated by reference into this Order and made a part hereof.

C. Respondents shall comply with all terms of each Divestiture Agreement, and any breach by Respondents of any term of any Divestiture Agreement shall constitute a failure to comply with this Order. If any term of any Divestiture Agreement varies from the terms of this Order ("Order Term"), then to the extent that Respondents cannot fully comply with both terms, the Order Term shall determine Respondents' obligations under this Order.

IX.

IT IS FURTHER ORDERED that:

A. For a period of ten (10) years from the date this Order is issued, Respondents shall not, without providing advance written notification to the Commission in the manner described in this Paragraph:

1. Acquire, directly or indirectly, any stock, share capital, equity, or other interest in any Person that, at any time during the twelve (12) months immediately preceding such acquisition, was engaged in or is engaged in providing General Acute Care Inpatient Hospital Services in a Relevant Area; or

2. Enter, directly or indirectly, into any agreement or other arrangement to manage or otherwise control an Acute Care Hospital, or be managed or otherwise controlled by an Acute Care Hospital, which, during the twelve (12) months immediately preceding such agreement or arrangement, was engaged or is engaged in providing General Acute Care Inpatient Hospital Services in a Relevant Area.

B. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (herein referred to as "the Notification"), 16 C.F.R. § 803 App., and shall be prepared and transmitted in accordance with the requirements of that Part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of Respondents and not of any other party to the transaction. Respondents shall provide the Notification to the Commission at least thirty (30) days prior to consummating the transaction (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information or documentary material (within the meaning of 16 C.F.R. § 803.20), Respondents shall not consummate the transaction until thirty (30) days after submitting such additional information or documentary material. Early termination of the waiting periods in this Paragraph may be requested

and, where appropriate, granted by letter from the Bureau of Competition. *Provided, however*, that prior notification shall not be required by this Paragraph for a transaction for which Notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. § 18a.

X.

IT IS FURTHER ORDERED that:

A. Within thirty (30) days after this Order is issued, and every thirty (30) days thereafter until Respondents have complied with their obligations in Paragraphs II. and III. of this Order (or Paragraph VII. of this Order, if applicable), Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, and have complied with Paragraphs II. and III. of this Order (or Paragraph VII. of this Order, if applicable). Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II. and III. of this Order (or Paragraph VII. of this Order, if applicable), including a description of all substantive contacts or negotiations for the divestitures and the identity of all parties contacted. Respondents shall include in their compliance reports copies of all written communication to and from such parties, all internal memoranda, and all reports and recommendations concerning the divestiture.

B. One (1) year after this Order is issued, annually for the next nine (9) years on the anniversary of that date, and at other times as the Commission may require, Respondents shall file verified written reports with the Commission setting forth in detail the manner and form in which they have complied and are complying with this Order.

XI.

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least thirty (30) days prior to:

A. Any proposed dissolution of such Respondent;

B. Any proposed acquisition, merger, or consolidation of such Respondent; and

C. Any other change in such Respondent including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XII.

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, and upon written request and upon five (5) days notice to the applicable Respondent made to their principal United States offices, registered office of their United States subsidiaries, or headquarters addresses, such Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

A. Access, during business office hours of such Respondent and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and all other records and documents in the possession or under the control of such Respondent related to compliance with this Order, which copying services shall be provided by such Respondent at the request of the authorized representative(s) of the Commission and at the expense of such Respondent; and

B. The opportunity to interview officers, directors, or employees of such Respondent, who may have counsel present, related to compliance with this Order.

XIII.

IT IS FURTHER ORDERED that this Order shall terminate on April 11, 2024.

By the Commission.

ANALYSIS OF CONSENT ORDERS TO AID PUBLIC COMMENT

I. INTRODUCTION AND BACKGROUND

The Federal Trade Commission ("Commission") has accepted for public comment, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Community Health Systems, Inc. ("CHS") and Health Management Associates, Inc. ("HMA"). The purpose of the proposed Consent Agreement is to remedy the anticompetitive effects that otherwise would result from CHS's acquisition of HMA. The proposed Consent Agreement requires CHS to divest the Riverview Regional Medical Center ("Riverview") and all associated operations and businesses in and around Gadsden, Alabama, and the Carolina Pines Regional Medical Center ("Carolina Pines") and all associated operations and businesses in and around Hartsville, South Carolina, to a Commission-approved acquirer, and in a manner approved by the Commission, within six months after the Decision and Order is issued. Under the proposed Consent Agreement, CHS also is required to hold separate the to-be-divested assets and maintain the economic viability, marketability, and competitiveness of the divestiture assets, until the potential acquirer is approved by the Commission and the divestiture is complete. Finally, CHS is required to provide the Commission prior notice of any acquisition of a GAC services provider in the Gadsden Metropolitan Statistical Area and the Florence Metropolitan Statistical Area for ten years.

The proposed Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission again will review the proposed Consent Agreement and comments received, and decide whether it should withdraw the Consent Agreement, modify the Consent Agreement, or make it final.

On July 29, 2013, CHS and HMA signed a merger agreement pursuant to which CHS agreed to acquire HMA for $7.6 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by removing an actual, direct, and substantial competitor from two local markets in Alabama and South Carolina for general acute care inpatient services sold to commercial health plans. The proposed Consent Agreement would remedy the alleged violations by requiring complete divestitures in the affected markets. The divestitures will replace the competition that otherwise would be lost in the Alabama and South Carolina markets because of the proposed acquisition.

II. THE PARTIES

Headquartered in Franklin, Tennessee, CHS is a for-profit health system that owns 135 hospitals with approximately 20,000 licensed beds in 29 states. CHS is the second-largest U.S. hospital chain and one of the largest publicly-traded operators of hospitals in the United States. CHS generated approximately $13 billion in revenue in 2012.

HMA is a for-profit health system headquartered in Naples, Florida that owns 71 hospitals in 15 states, primarily in the southeastern United States. In 2012, HMA generated $5.9 billion in revenue.

III. GENERAL ACUTE CARE INPATIENT SERVICES

CHS's proposed acquisition of HMA poses substantial antitrust concerns in the relevant product market of general acute

care inpatient services ("GAC services") provided to commercially insured patients. GAC services consist of a broad cluster of routine inpatient services that require an overnight hospital stay. They are sold to commercial health plans, which sell benefit plans to commercially insured patients. GAC services do not include services related to psychiatric care, substance abuse, and rehabilitation services. Likewise, outpatient services are not included in GAC services because such services are characterized by different competitive conditions (*e.g.*, different competitors, lower entry barriers) and because health plans and their members generally cannot substitute those services for inpatient services in response to a small but significant and non-transitory increase in price.

GAC services markets are local in nature. Evidence gathered from market participants shows that patients strongly prefer to receive care as close to home as possible and to stay within the area where they live or work. Accordingly, the proposed acquisition raises serious antitrust concerns in two local markets for patients seeking GAC services: (1) the area that approximates Etowah County and includes the City of Gadsden, Alabama (the "Gadsden Area"); and (2) the area that approximates Darlington County, South Carolina (the "Darlington County Area").

The proposed acquisition would combine the only two competitively meaningful hospitals providing GAC services to Gadsden Area patients—HMA's Riverview and CHS's Gadsden Regional Medical Center ("Gadsden Regional"). The Gadsden Area market already is highly concentrated, and the proposed merger would substantially increase concentration in that market absent relief. Post-merger, commercially insured patients in the Gadsden Area would have only CHS's hospitals as meaningful options to obtain GAC services. The presumption of anticompetitive harm created by such high levels of market concentration is supported by evidence of the close competition between Riverview and Gadsden Regional that would be eliminated by the proposed merger. Consumers in the Gadsden Area have benefited from this head-to-head competition in the form of lower health care costs and higher quality of care. Absent relief, CHS would gain additional leverage and be able to demand higher reimbursement rates from commercial health plans, and

would have reduced incentives to maintain and improve its quality of care. Ultimately, these effects are felt by local patients in the form of higher premiums, co-pays, and out-of-pocket costs, as well as reduced access to high-quality care.

In South Carolina, the proposed acquisition would combine two of only three competitively meaningful hospitals providing GAC services to Darlington County Area commercially insured patients—HMA's Carolina Pines and CHS's Carolinas Hospital-Florence ("Carolinas Hospital"). Third-party McLeod Regional Medical Center ("McLeod Regional") also serves the Darlington County Area. The Darlington County Area market is highly concentrated, and the proposed merger would substantially increase concentration in that market absent relief. Post-merger, commercially insured patients in the Darlington County Area would have only two meaningful options for GAC services—either a CHS-owned hospital or third-party McLeod Regional. The presumption of anticompetitive harm is supported by evidence of the close competition between Carolina Pines and Carolinas Hospital that would be eliminated by the proposed merger. Consumers in the Darlington County Area have benefited from this head-to-head competition in the form of lower health care costs and higher quality of care. Absent relief, CHS would gain additional leverage and be able to demand higher reimbursement rates from commercial health plans, and would have reduced incentives to maintain and improve its quality of care. Ultimately, these effects are felt by local patients in the form of higher premiums, co-pays, and out-of-pocket costs, as well as reduced access to high-quality care.

New entry or expansion is unlikely to deter or counteract the anticompetitive effects of the proposed acquisition in either market. Alabama's Certificate of Need ("CON") statute poses a regulatory hurdle that must be overcome before constructing new healthcare facilities, expanding or modifying existing facilities, or altering inpatient services. South Carolina has a similar CON statute. Significant entry barriers also include the time and costs associated with constructing or expanding a general acute care hospital. There is no evidence of planned entry into either market or any evidence that there is unmet demand for GAC services in either market that might spur entry or expansion. Thus, it is

unlikely that new entry or expansion sufficient to achieve a significant market impact will occur in a timely manner in either market.

IV. THE PROPOSED CONSENT AGREEMENT

The proposed Consent Agreement remedies the anticompetitive concerns in both local markets. The proposed Consent Agreement would maintain competition in the Gadsden Area by requiring CHS to divest Riverview and its associated operations and businesses. Similarly, the proposed Consent Agreement would fully maintain competition in the Darlington County Area by requiring CHS to divest Carolina Pines and its associated operations and businesses. Any potential buyer for either hospital is subject to the prior approval of the Commission.

The proposed Consent Agreement also requires CHS to provide transitional services to the approved acquirers for one year, as needed, to assist the acquirers with operating the divested assets as viable and ongoing businesses. Until the divestitures are completed, CHS is required to hold Riverview and Carolina Pines separate, subject to the standard terms of the Order to Hold Separate and Maintain Assets. The proposed order also appoints Curtis Lane, the senior managing director of MTS Health Partners, LP, as Hold Separate Monitor to oversee CHS's compliance with the Order to Hold Separate and Maintain Assets. Finally, the proposed order contains a ten-year prior notice requirement for acquisitions of GAC services providers in the Gadsden, Alabama Metropolitan Statistical Area or in the Florence, South Carolina Metropolitan Statistical Area, as well as compliance reporting requirements.

The hospitals to be divested are each stand-alone businesses and include all of the assets and real property necessary for a Commission-approved buyer to compete immediately and effectively in each relevant market. In addition to divestiture of the actual facilities at issue, CHS has agreed to divest the rights to all intellectual property, including the facility names, and all provider and health plan contracts associated with the facilities. Although the competitive concerns relate to GAC services to commercially insured patients only, the proposed order

contemplates divestiture of all services and operations that are affiliated with the facility or facilities to be divested that are necessary to be a viable business. Specifically, CHS will divest all outpatient operations and businesses, including outpatient physician practices, associated with each hospital. This requirement is consistent with similar divestitures in prior Commission actions.

The sole purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis does not constitute an official interpretation of the Consent Agreement or modify its terms in any way.