

ORIGINAL



**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)
PHOEBE PUTNEY HEALTH SYSTEM, INC.,) **DOCKET NO. 9348**
et. al) **PUBLIC DOCUMENT**
)
Respondents.)
_____)

**BAUDINO LAW GROUP, PLC'S MOTION
TO QUASH SUBPOENA *DUCES TECUM* OR, IN
THE ATLERNATIVE, MOTION TO LIMIT SUBPOENA *DUCES TECUM***

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Pursuant to Section § 3.34 (c) of the Federal Trade Commission’s (“FTC”) Rules of Practice, 16 C.F.R. § 3.34 (c), Baudino Law Group, PLC (“Law Firm”) hereby files its Motion to Quash Subpoena *Duces Tecum* or, in the Alternative, Motion to Limit Subpoena *Duces Tecum*, as follows:

I. PRELIMINARY STATEMENT

The parties to this action have asserted immunity from this administrative action and the proceedings pending before the United States District Court for the Middle District of Georgia under the state action doctrine. The Law Firm’s filing of this Motion to Quash Subpoena *Duces Tecum* or, in the Alternative, Motion to Limit Subpoena *Duces Tecum* is not intended to waive the dispositive issue of the applicability of the state action immunity doctrine and all defenses to these actions are specifically incorporated by reference herein.

II. INTRODUCTION AND SUMMARY

The Law Firm is a law firm based in Des Moines, Iowa, with two offices in Georgia. It has a longstanding relationship with the Respondent in this matter, Phoebe Putney Health System, Inc. (“PPHS”), representing it in litigation as well as transactional matters since its formation. The Law Firm presently represents PPHS on several matters most of which are unrelated to the matter presently before the Administrative Law Judge. The Law Firm has also represented the Respondent, the Hospital Authority of Albany-Dougherty County (“Authority”), regarding various matters over the years.

Prior to December 21, 2010, Palmyra Hospital, Inc. (“Palmyra”), the Authority, and PPHS negotiated an Asset Purchase Agreement for the Authority to purchase Palmyra Medical Center from Palmyra. On December 21, 2010, the Authority and Palmyra signed an Asset Purchase Agreement for the Authority to acquire Palmyra Medical Center (“Transaction”). The

Law Firm is representing the Authority and PPHS as transactional counsel with regard to this Transaction. Although the Law Firm has on-going representation of PPHS on multiple unrelated matters as mentioned above, on November 10, 2010, the Law Firm was retained to represent the Authority specifically with regard to the Transaction.

On December 29, 2010, the Federal Trade Commission Bureau of Competition (“FTC”) informed the parties that it had opened a non-public preliminary investigation of the proposed Transaction. Shortly thereafter, PPHS retained the Weil, Gotshal & Manges LLP law firm in Washington, DC to represent PPHS in this FTC investigation. The Law Firm undertook representation of the Authority for purposes of the FTC investigation along with Bondurant, Mixson & Elmore, LLP, a law firm based in Atlanta, Georgia, which is lead counsel regarding the FTC investigation on behalf of the Authority. At all times material hereto, Perry & Walters, LLP, a law firm based in Albany, Georgia, represents the Authority as general counsel.

On February 3, 2011, PPHS was informed by letter that the FTC changed its investigation from a preliminary investigation to a formal investigation. During the course of the preliminary investigation as well as the formal investigation, the Authority and PPHS produced documentation amounting to over 250,000 pages to the FTC. Despite complete cooperation with the FTC’s requests to resolve its questions without formal litigation with regard to the Transaction, on April 26, 2011, a complaint for temporary restraining order and preliminary injunction was filed in the United States District Court for the Middle District of Georgia by the FTC and the Attorney General for the State of Georgia. A complaint before the Administrative Law Judge was filed on April 19, 2011 regarding the same matter.

On June 13, 2011, a Subpoena *Duces Tecum* was served upon the Law Firm with a compliance date of July 1, 2011 (“Subpoena”)¹. The documents sought in the Subpoena mirror

¹ The Subpoena is attached hereto as Exhibit A.

the documents the FTC seeks in an almost identical *Subpoena Duces Tecum* served upon the Sovereign Group, L.L.C., a third party to this action, with the same July 1, 2011 compliance date. Further, the requests in the Subpoena are repetitive of the requests that have already been sent to the Authority and PPHS regarding this matter.

Counsel from the Law Firm had two conversations with FTC counsel, Goldie Walker and Thomas Brock, on June 16, 2011 and June 20, 2011, regarding whether any appropriate modifications and/or limitations to the Subpoena could be made given the fact that the Subpoena was served upon a law firm actively representing a party involved in pending litigation and an on-going FTC investigation, as well as representing two (2) parties involved in pending transactional matters. After the June 16, 2011 call, Karin Middleton of the Law Firm committed to again review the Subpoena for the purpose of gleaning if there could be any responsive information to which the FTC would be entitled that could not be provided by the parties or third parties. The FTC and the Law Firm agreed to speak again on June 20, 2011.

During those conversations and in a subsequent letter from the FTC on June 21, 2011, the FTC failed to show (or even articulate) good cause as to why it needs this information from the Law Firm as required by the FTC administrative rules and common law principles favoring the preservation of the attorney-client privilege and attorney work product doctrine when this information can clearly be sought (or already has been sought) from the parties and third parties in this action. Beyond this basic threshold premise, as more fully outlined below, the Law Firm indicated to the FTC's counsel that the Subpoena is overly broad and unduly burdensome on the Law Firm given its history of representation of PPHS, cumulative of prior document requests and highly unlikely to result in any new information that has not already been produced to the FTC or subject to the attorney client privilege ("AC Privilege") or attorney work product doctrine ("WP Doctrine"). The only response that the Law Firm could give would be a privilege

log that would be unduly burdensome to prepare.² Despite the Law Firm's arguments presented during the phone conferences, the FTC's counsel sent a letter after 5:00 pm on June 21, 2011 incompletely summarizing the Law Firm's position (and inaccurately characterizing the Law Firm's representation of the Authority and PPHS) and indicating that the FTC and the Law Firm have reached an impasse. Notably absent from the conversations and the letter from the FTC is any suggestion by the FTC as to how to limit its request to address the Law Firm's legitimate concerns regarding confidentiality as it relates to law firms and its clients generally and the unduly burdensome and cumulative nature of the Subpoena.

III. ARGUMENT

A. **The Subpoena is Improper Based Upon Well Established Common Law Principles That Apply to Law Firms and Their Clients With Regard To Maintaining Client Confidences**

The Subpoena served on the Law Firm is improper for the basic reason that a law firm has a duty to maintain its clients' confidences and therefore is not obligated to respond to such requests without a heightened showing from the party seeking the documentation. The Subpoena served upon the Law Firm is a fifteen (15) page document that requests documents generated or transmitted in its representation of the Law Firm's clients. Specifically, the FTC seeks sixteen (16) Specifications of documents "in accordance with the Definitions and Instructions set forth." The Specifications describe documents generated by lawyers representing clients in active and pending matters.

Obviously, many of these documents sought by the FTC include documents generated by lawyers that are subject to the AC Privilege, WP Doctrine, and/or the lawyers' ethical duty to maintain their clients' confidences. *See e.g.*, Georgia Rules of Professional Responsibility, R.

² Thomas Brock of the FTC did offer to exclude from the privilege log any documents or communications that were internal only to the Law Firm. While this concession is helpful in preparing a privilege log, it would likely result in a privilege log that is virtually identical to the ones already produced by the parties and third parties in this matter and would not relieve the Law Firm of the unduly burdensome search that it seeks to avoid.

1.6 (requiring a lawyer maintain in confidence all information gained in the professional relationship with the client). The FTC rules also recognize the existence of various privileges with regard to service of a subpoena by the FTC. *See* 16 C.F.R. § 3.34 (c).

The AC Privilege is the oldest of the privileges for the confidential communications known to the common law. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981). The purpose of the AC Privilege is to facilitate full and frank disclosure between attorneys and clients. *Id.* The AC Privilege protects “confidential disclosures by a client to an attorney made in order to obtain legal assistance.” *Fisher v. United State*, 425 U.S. 391, 403 (1976). In order to invoke the AC Privilege, the following must be established: (1) the asserted holder of the privilege is a client; (2) the person to whom the communication was made is a member of the bar and acting as a lawyer in connection with the communication; (3) the communication relates to a fact of which the attorney was informed by the client, without the presence of strangers for the purpose of securing legal advice; and (4) the privilege is claimed and not waived by the client. *U.S. v. Noriega*, 917 F.2d 1543, 1550 (11th Cir. 1990).

The well recognized rule of *Hickman v. Taylor*, 329 U.S. 495, 510 (1947) protects the work product of lawyers from discovery unless a substantial showing of necessity or justification is made. In order to assert the WP Doctrine, the materials withheld must be: (1) documents and tangible things; (2) prepared in anticipation of litigation or for trial; and (3) documents or tangible things prepared by or for the party or attorney asserting the privilege. *Carnes v. Crete Carrier Corp.*, 244 F.R.D. 694, 698 (N.D. Ga. 2007).

An attorney/client relationship was established between the Law Firm and PPHS back in the early 1990s and with the Authority with regard to this Transaction on November 10, 2010. Many of the documents requested in the Subpoena are either communications/information received by the Law Firm from PPHS and the Authority in their capacity as clients seeking legal

services from the Law Firm or documents and tangible things that the Law Firm has prepared over the years in anticipation of litigation or for trial. Neither PPHS nor the Authority has waived the applicable privileges and protections. *See Stern v. Shelley*, 2009 U.S. Dist. LEXIS 130148 * 19 (N.D. Ga. Aug. 28, 2009)(noting that the AC Privilege belongs to the client and only the client may waive it). As the Fifth Circuit³ held, “[t]he purpose of the [AC] [P]rivilege would be undermined if people were required to confide in attorneys at the peril of compulsory disclosure every time the government decided to subpoena attorneys it believed represented particular suspected individuals.” *See U.S. v. Hankins*, 631 F.2d 360, 365 (1980) *quoting U.S. v. Jones*, 517 F.2d 666, 675 (5th Cir. 1975). Requiring the Law Firm to comply with the Subpoena would completely undermine the purpose of its AC Privilege and WP Doctrine with both PPHS and the Authority. *See also Swidler & Berlin v. United States*, 524 U.S. 399 (1998) (upholding the application of the AC Privilege and WP Doctrine where the government served subpoenas upon law firms reasoning that “reason and experience” as well as the government’s counsel’s failure to make a sufficient showing to overturn common law rule prevented the disclosure of the law firm’s files). Further, the Law Firm’s relationship with its clients would be seriously weakened if they fear that the Law Firm could disclose to an opposing party their records and/or other communications. *Hankins*, 631 F.2d at 365.

B. Applicable Legal Principles for Agency Subpoenas Require A Good Cause Showing

Notwithstanding the fact that the clear applicability of the AC Privilege, WP Doctrine, and ethical duties to maintain client confidences renders the Subpoena on the Law Firm improper, the FTC rules specifically provide that while the parties may obtain discovery reasonably expected to yield information relevant to the allegations of the complaint, the respondent is *not* required to search for materials generated and transmitted between an entity’s

³ *Bonner v. Prichard*, 661 F.2d 1206 (11th Cir. 1981)(adopting as binding precedence, all decisions by the 5th Circuit issued before Sept. 30, 1981).

counsel and not shared with anyone else unless the Administrative Law Judge determines there is good cause to provide such materials. 16 C.F.R. §3.31(c)(2). An Administrative Law Judge may limit the discovery sought if he or she determines that:

- (i) The discovery is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome or less expensive;
- (ii) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii) The burden and expense of the proposed discovery outweigh its likely benefit.

16 C.F.R. §3.31(c)(2).

The drafters of the “good cause” requirement recognized that it would be rare for any material sought from an entity’s counsel not to be duplicative, privileged or work product. 74 FR 1804 (January 13, 2009). The reason is simple – the material generated and transmitted by an entity’s lawyers is protected from discovery by the AC Privilege or WP Doctrine or could be produced by the party itself. As recently as 2009, the FTC adjusted its own agency rules defining the scope of discovery. The Rules adopted a “good cause” requirement that must be met before materials generated or transmitted by lawyers can be produced. Nowhere in the Subpoena served upon the Law Firm is there any determination of “good cause” as required by Rule 3.31(c)(2). Therefore, in this case, the Law Firm can unequivocally demonstrate that all three (3) of the above-listed guidelines apply to this matter thereby making the FTC’s Subpoena on the Law Firm improper.

1. The Discovery Sought is Unreasonably Cumulative, Obtainable From Another Source, or Could Have Already Been Obtained

The documents sought by Complaint Counsel include retainer agreements and communications that relate to the Palmyra Medical Center purchase. These documents are unreasonably cumulative because since January 14, 2011, the Authority, PPHS and Palmyra (or HCA Inc., its parent corporation) have produced transaction documents to the FTC both on an

informal basis and then pursuant to formal subpoenas. *See, e.g., In re Thompson*, 624 F.2d 17, 19 (5th Cir. 1980)(noting that the government who issued a subpoena on an attorney seeking items of work product failed to show that the government did not otherwise have the information it sought or that it lacked the opportunity to do so)⁴.

Additionally, the FTC has already sought transaction documents relating to communications or meetings between the Authority and Palmyra from the Authority⁵. Specifically, in Specification eight (8) of the Subpoena *Duces Tecum* served upon the Authority, the Authority was asked to produce “all documents ... relating to the proposed acquisition....” *See Subpoena Duces Tecum* issued February 14, 2011.

Similarly, upon information and belief, the FTC has already requested all documents relating to the proposed acquisition from PPHS.

And, most recently, Complaint Counsel seeks IDENTICAL DOCUMENTS from the Sovereign Group, L.L.C. For instance, aside from the first two requests seeking retainer agreements involving PPHS and the Authority, both subpoenas request the following identical documents from both the Sovereign Group, L.L.C. and the Law Firm:

3. All communications with the Hospital Authority that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital, Inc., by Phoebe Putney or the Hospital Authority.

4. All communications with Phoebe Putney that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital by Phoebe Putney or the Hospital Authority.

5. All communications with HCA/Palmyra that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital by Phoebe Putney or the Hospital Authority.

6. All communications with [Sovereign Group or Douglas

⁴ *See Bonner v. Prichard*, 661 F.2d 1206 (11th Cir. 1981)(adopting as binding precedent, all decisions issued by the 5th Circuit before Sept. 30, 1981).

⁵ In the event that the Administrative Law Judge wishes to review the subpoenas issued to the Authority, PPHS, and Sovereign Group, L.L.C. in their entirety, the Law Firm will provide them upon request.

Lewis/Baudino Law Group PLC] that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital by Phoebe Putney or the Hospital Authority.

7. All documents since 1985 that refer to or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital by Phoebe Putney or the Hospital Authority.

8. All documents that refer to or relate in any way to the December 21, 2010 Asset Purchase Agreement By and Among the Hospital Authority of Albany-Dougherty County, Phoebe Putney Health Systems, Inc., Phoebe North, Inc., and Palmyra Park Hospital, Inc.

9. All documents that relate in any way to the Resolution of the Hospital Authority Approving Proposed Transaction with Palmyra Park Hospital, Inc; Authorizing Waiver of Lease Provision; Approving Management Agreement; and Declaring Official Intent Relative to Possible Tax Exempt Financing, dated December 21, 2010.

10. All documents that refer or relate in any way to the Resolution of the Hospital Authority Relating to Funding of Authority Obligations Under the Asset Purchase Agreement, Development of a Lease, and Amendment of Asset Purchase Agreement, dated February 2, 2011.

11. All documents that refer or relate in any way to the Resolution of Hospital Authority Approving Execution and Delivery of Second Amendment to Asset Purchase Agreement and Approving Basic Terms and Provisions to Be Included in Any Revised Lease With Phoebe Putney Memorial Hospital, Inc. dated April 4, 2011.

12. All documents that refer or relate in any way to the Resolution of Hospital Authority, dated May 5, 2011.

13. All documents that refer or relate in any way to the draft Management Services Agreement, PP-HC-00002950.

14. All documents that refer or relate in any way to the meetings of the Hospital Authority on or about December 21, 2010, February 2, 2011, April 4, 2011, or May 5, 2011.

15. All documents that refer or relate in any way to the letter from the Company to Mr. Joseph A. Sowell, III, Senior Vice president and Chief Development Officer, HCA Inc., dated November 10, 2010. This specification includes drafts and underlying research and analysis you conducted in preparation of this letter.

16. All documents that refer or relate in any way to the letter from

[Sovereign Group PLC/ Baudino Law Group, PLC] to Mr. Joseph A. Sowell, III, Senior Vice president and Chief Development Officer, HCA Inc., dated November 10, 2010.

Even if Complaint Counsel does not already possess the information sought, Complaint Counsel has had ample opportunity to obtain the information listed from sources other than the Law Firm. This investigation was initiated by the FTC in December 2010. Since then, the respondents have cooperated by producing the requested documents on both an informal and formal basis.

Thus, the documents sought by the FTC are overly cumulative as the documents are already in the FTC's possession, could have been sought from the parties involved by virtue of the subpoenas served upon both the Authority and PPHS in February, or are *currently being sought* from another source, i.e., the Sovereign Group, L.L.C. The FTC's repeated failure to articulate a good cause reason why it was seeking this information from the Law Firm, even after Law Firm communicated its legitimate concerns with regard to the overly broad nature of the Subpoena, when it has either already requested this information from other parties or could otherwise obtain this information from other parties or third parties borders on harassment and therefore this Subpoena should be quashed in its entirety.

2. The Burden and Expense of the Proposed Discovery Outweighs Benefit

The burden and expense of requiring the Law Firm to produce a limited number of non-privileged and non-protected responsive documents outweighs the benefits sought by Complaint Counsel. *See FTC v. Texaco, Inc.*, 555 F.2d 862, 879 (D.C. Cir. 1977) *cert. denied*, 431 U.S. 974 (1977)(stating that a subpoena must be enforced if the information sought is reasonable to the lawful purpose of the agency and *not* unduly indefinite or unreasonably burdensome)(emphasis supplied). First, the search terms needed for the electronic documents will most likely result in thousands of documents that are not likely material and/or relevant to this matter or otherwise

protected by AC Privilege and/or WP Doctrine since the Law Firm has been representing one or more parties to this matter since at least the early 1990s.

Second, the overly broad and burdensome requests contained in the Subpoena would obstruct the Law Firm's normal business operations. *See Texaco, Inc.*, 555 F.2d at 882 (a subpoena may be unduly burdensome if it unduly disrupts or seriously hinders a business' normal operations). The burden of searching the Law Firm's hard copy and electronic documents for the last twenty-six (26) years, i.e., since 1985, is unreasonable and a monumental task to undertake within eighteen (18) days.

Third, the expense that would be incurred by having attorneys review the documents that would be returned in a twenty-six (26) year search for responsiveness and, if responsive, for privilege and then prepare a voluminous privilege log describing the documents and explaining the basis for withholding each responsive document would cost the Law Firm hundreds of hours of valuable attorney time.

Thus, the undue burden and expense of attempting to put forth even a good faith attempt to comply with the Subpoena would require the Law Firm's attorneys to divert their attention away from working on matters for its other clients and result in a disruption of the Law Firm's normal business operations. Certainly, the benefit of obtaining this limited amount, if any, of proposed discovery does not warrant this burden or expense and therefore this Subpoena should be quashed in its entirety.

IV. GENERAL OBJECTIONS

The Law Firm sets forth its general objections to the Subpoena below. Each general objection is hereby incorporated by reference into each specification of the Subpoena.

1. The Law Firm objects to the specifications, definitions, and instructions in the Subpoena to the extent that the materials sought were generated and transmitted by the Law Firm

and thus protected by AC privilege, the WP Doctrine, or any other applicable privilege or ethical duty to maintain client confidences.

2. The Law Firm objects to the specifications, definitions, and instructions in the Subpoena to the extent the FTC has not demonstrated the “good cause” required by 16 CFR § 3.31(c)(2) to justify a search for materials generated and transmitted by respondent’s counsel.

3. The Law Firm objects to the specifications, definitions, and instructions in the Subpoena to the extent they are cumulative, duplicative and/or available from a more convenient, less burdensome or less expensive source.

4. The Law Firm objects to the specifications, definitions, and instructions in the Subpoena to the extent they unreasonably require production of documents and information within eighteen (18) days of receipt of the Subpoena. Eighteen (18) days is not a practical time period to search for, collect, process, review, and produce all non-privileged and non-protected documents and information responsive to the Subpoena.

5. The Law Firm objects to the specifications, definitions, and instructions in the Subpoena on the ground that compliance with all of the specifications is unduly burdensome on the Law Firm and would unduly disrupt and seriously hinder normal operations of the Law Firm’s business.

6. The Law Firm objects to Instruction C in the Subpoena in that it defines “Company” as “Baudino Law Group, P.L.C, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliate, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of each of the foregoing.” The Law Firm objects to Instruction C in the Subpoena because it requires the Law Firm to search entities and facilities that are unlikely to have relevant documents or information.

7. The Law Firm objects to the specifications, definitions, and instructions in the

Subpoena on the ground that they are unreasonably broad given that the Law Firm has only eighteen (18) days to comply with all of the specifications in the Subpoena.

V. SPECIFIC OBJECTIONS TO THE SUBPOENA

1. All retainer agreements between you and Phoebe Putney.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondent, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

2. All retainer agreements between you and the Hospital Authority.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondent, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

3. All communications with the Hospital Authority that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital, Inc., by Phoebe Putney or the Hospital Authority.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondents or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

4. All communications with Phoebe Putney that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital by Phoebe Putney or the Hospital Authority.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondents or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

5. All communications with HCA/Palmyra that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital by Phoebe Putney or the Hospital Authority.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondents or a third party, it is already in its possession or any other

potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

6. All communications with Sovereign Group or Douglas Lewis that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital by Phoebe Putney or the Hospital Authority.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from Respondents or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

7. All documents since 1985 that refer to or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital by Phoebe Putney or the Hospital Authority.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondents or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce

all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

8. All documents that refer to or relate in any way to the December 21, 2010 Asset Purchase Agreement By and Among the Hospital Authority of Albany-Dougherty County, Phoebe Putney Health Systems, Inc., Phoebe North, Inc., and Palmyra Park Hospital, Inc.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondents or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

9. All documents that relate in any way to the Resolution of the Hospital Authority Approving Proposed Transaction with Palmyra Park Hospital, Inc; Authorizing Waiver of Lease Provision; Approving Management Agreement; and Declaring Official Intent Relative to Possible Tax Exempt Financing, dated December 21, 2010.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondent, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen

(18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

10. All documents that refer or relate in any way to the Resolution of the Hospital Authority Relating to Funding of Authority Obligations Under the Asset Purchase Agreement, Development of a Lease, and Amendment of Asset Purchase Agreement, dated February 2, 2011.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondents or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

11. All documents that refer or relate in any way to the Resolution of Hospital Authority Approving Execution and Delivery of Second Amendment to Asset Purchase Agreement and Approving Basic Terms and Provisions to Be Included in Any Revised Lease With Phoebe Putney Memorial Hospital, Inc. dated April 4, 2011.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondents, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen

(18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

12. All documents that refer or relate in any way to the Resolution of Hospital Authority, dated May 5, 2011.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondent, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

13. All documents that refer or relate in any way to the draft Management Services Agreement, PP-HC-00002950

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondents or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

14. All documents that refer or relate in any way to the meetings of the Hospital Authority on or about December 21, 2010, February 2, 2011, April 4, 2011, or May 5, 2011.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondent or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

15. All documents that refer or relate in any way to the letter from the Company to Mr. Joseph A. Sowell, III, Senior Vice president and Chief Development Officer, HCA Inc., dated November 10, 2010. This specification includes drafts and underlying research and analysis you conducted in preparation of this letter.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondents or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the eighteen (18) days required by the subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

16. All documents that refer or relate in any way to the letter from Sovereign Group PLC to Mr. Joseph A. Sowell, III, Senior Vice president and Chief Development Officer, HCA Inc., dated November 10, 2010.

OBJECTION

The Law Firm incorporates by reference all of its general objections set forth in Section IV above. The Law Firm objects to this specification to the extent that it already has or could request it from the Respondent or a third party, it is already in its possession or any other potentially responsive information in the Law Firm's possession would be protected by the AC Privilege, WP Doctrine, or ethical duty. The Law Firm objects to this specification to the extent that it is overbroad in that the Law Firm cannot search for, collect, process, review, and produce all non-privileged documents and non-protected information responsive to this specification within the 18 days required by the Subpoena. The Law Firm objects to this specification to the extent it requests documents that are not relevant to the FTC's investigation.

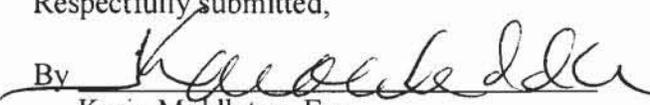
VI. CONCLUSION

It is the FTC's burden to show good cause as to why Law Firm should be required to produce documents and materials pursuant to the Subpoena when the information can clearly be sought (or already has been sought) from the parties and/or third parties. The FTC has failed to meet this burden. Thus, for all of the foregoing reasons, the Law Firm respectfully requests that the Administrative Law Judge quash the Subpoena *Duces Tecum* served by Complaint Counsel in its entirety. In the alternative, in the unlikely event that the Administrative Law Judge does not quash the Subpoena *Duces Tecum* served by Complaint Counsel, Law Firm respectfully requests that the Administrative Law Judge limit the scope of the Subpoena *Duces Tecum* to documents that Complaint Counsel cannot otherwise obtain from a third party, documents unrelated to the representation of the parties to this matter, and limit the source of the documents to relevant computers.

Dated: June 23, 2011

Respectfully submitted,

By

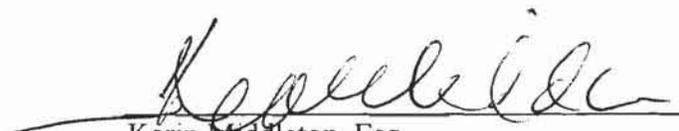

Karin Middleton, Esq.
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Jan Gibson, Esq.
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Amy McCullough, Esq.
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Baudino Law Group, PLC
2409 Westgate Drive
Albany, Georgia 31707
(229) 883-0051
(229) 888-6190 (fax)
Attorneys for Baudino Law Group, PLC

VERIFICATION

Pursuant to 16 C.F.R. Section 2.7(d)(2), counsel for Baudino Law Group, PLC hereby certifies that they have conferred with counsel for The Federal Trade Commission by phone and letter correspondence in a good faith effort to resolve by agreement the modifications sought by this Motion, but have been unable to reach an agreement. Counsel for Baudino Law Group, PLC, Karin A. Middleton, had conversations with FTC counsel Thomas Brock and Ms. Goldie Walker on June 16, 2011 at approximately 2:00 pm EDT and on June 20, 2011 at approximately 11:00 am EDT, in a good faith attempt to resolve the issues set forth in this Motion. Baudino Law Group, PLC also received a letter from Thomas Brock on June 21, 2011 and responded to the letter on June 23, 2011. However, the parties have yet to come to any satisfactory agreement on the issues raised in this Motion.

Dated: June 23, 2011



Karin Middleton, Esq.
Baudino Law Group, PLC
2409 Westgate Drive
Albany, Georgia 31707
(229) 883-0051
(229) 888-6190 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2011, I filed electronically Baudino Law Group, PLC's Motion to Quash *Subpoena Duces Tecum* or, in the Alternative, Motion to Limit *Subpoena Duces Tecum* with the FTC E-Filing System. I hereby certify that I caused the original and ten (10) copies of Baudino Law Group, PLC's Motion to Quash *Subpoena Duces Tecum* or, in the Alternative, Motion to Limit *Subpoena Duces Tecum* to be filed before the Administrative Law Judge and with the Secretary of the Federal Trade Commission and one (1) copy to Goldie V. Walker, via first-class mail to the following addresses:

Office of the Secretary of The Federal Trade Commission at the following address:

Federal Trade Commission
Office of the Secretary
Bureau of Competition, Mergers IV
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Email: Secretary@ftc.gov

Edward D. Hassi, Lead Complaint Counsel
Thomas H. Brock
Goldie V. Walker
Federal Trade Commission
Bureau of Competition
601 New Jersey Avenue, NW
Washington, D.C. 20580
Email: EHassi@ftc.gov
Email: TBrock@ftc.gov
Email: GWalker@ftc.gov

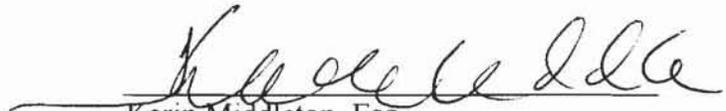
FTC Bureau of Competition
ATTN: Assistant Director
Room 383
600 Pennsylvania Avenue, NW
Washington, DC 20580
antitrust@ftc.gov

FTC Bureau of Consumer Protection

ATTN: Associate Director
600 Pennsylvania Avenue, NW
Washington, DC 20580

Director of the Regional Office of Complaint Counsel
Federal Trade Commission
601 New Jersey Avenue NW
Room NJ-5257
Washington, D.C. 20580

D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
Washington DC 20580



Karin Middleton, Esq.
Baudino Law Group, PLC
2409 Westgate Drive
Albany, Georgia 31707
(229) 883-0051
(229) 888-6190 (fax)

EXHIBIT A



SUBPOENA DUCES TECUM

Provided by the Secretary of the Federal Trade Commission, and
Issued Pursuant to Commission Rule 3.34(b), 16 C.F.R. § 3.34(b)(2010)

<p>1. TO</p> <p>Robert J. Baudino, Jr. Baudino Law Group, PLC 2409 Westgate Drive Albany, Georgia 31707</p>	<p>2. FROM</p> <p>UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION</p>
---	---

This subpoena requires you to produce and permit inspection and copying of designated books, documents (as defined in Rule 3.34(b)), or tangible things, at the date and time specified in Item 5, and at the request of Counsel listed in Item 9, in the proceeding described in Item 6.

<p>3. PLACE OF PRODUCTION</p> <p>Federal Trade Commission Bureau of Competition, Mergers IV 601 New Jersey Avenue, NW Washington, DC 20580</p>	<p>4. MATERIAL WILL BE PRODUCED TO</p> <p>Goldie V. Walker, Complaint Counsel</p> <hr/> <p>5. DATE AND TIME OF PRODUCTION</p> <p>July 1, 2011</p>
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6. SUBJECT OF PROCEEDING

In the Matter of Phoebe Putney Health System, Inc. et al., Docket No. 9348

7. MATERIAL TO BE PRODUCED

Please see attached.

<p>8. ADMINISTRATIVE LAW JUDGE</p> <p>Chief Judge D. Michael Chappell</p> <p>Federal Trade Commission Washington, D.C. 20580</p>	<p>9. COUNSEL AND PARTY ISSUING SUBPOENA</p> <p>Goldie V. Walker, Complaint Counsel Federal Trade Commission 601 New Jersey Avenue, NW, Room NJ-5257 Washington, DC 20580 202-326-2919</p>
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<p>DATE SIGNED</p> <p>6/10/2011</p>	<p>SIGNATURE OF COUNSEL ISSUING SUBPOENA</p> <p><i>Goldie V. Walker</i></p>
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GENERAL INSTRUCTIONS

APPEARANCE

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed before the Administrative Law Judge and with the Secretary of the Commission, accompanied by an affidavit of service of the document upon counsel listed in Item 9, and upon all other parties prescribed by the Rules of Practice.

TRAVEL EXPENSES

The Commission's Rules of Practice require that fees and mileage be paid by the party that requested your appearance. You should present your claim to counsel listed in Item 9 for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from counsel listed in Item 9.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)	
PHOEBE PUTNEY HEALTH SYSTEM, INC., <i>et al.</i> ,)	Docket No. 9348
Respondents.)	

**COMPLAINT COUNSEL'S SUBPOENA DUCES TECUM TO
BAUDINO LAW GROUP, PLC**

Pursuant to the Federal Trade Commission's Rules of Practice, 16 C.F.R. §§ 3.31 and 3.34, and the Scheduling Order entered by Chief Administrative Law Judge Chappell, Complaint Counsel hereby requests that Baudino Law Group, PLC produce the following in accordance with the Definitions and Instructions set forth below:

1. All retainer agreements between you and Phoebe Putney.
2. All retainer agreements between you and the Hospital Authority.
3. All communications with the Hospital Authority that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital, Inc. by Phoebe Putney or the Hospital Authority.
4. All communications with Phoebe Putney that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital, Inc. by Phoebe Putney or the Hospital Authority.
5. All communications with HCA/Palmyra that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital, Inc. by Phoebe Putney or the Hospital Authority.
6. All communications with the Sovereign Group or Douglas Lewis that refer or relate in any way to the acquisition of Palmyra Medical Center or Palmyra Park Hospital, Inc. by Phoebe Putney or the Hospital Authority.

Subpoena Duces Tecum Issued to the Baudino Law Group, PLC (Docket No. 9348)

7. All documents since 1985 that refer or relate in any way to the purchase of Palmyra Medical Center or Palmyra Park Hospital, Inc. by Phoebe Putney or the Hospital Authority.
8. All documents that refer or relate in any way to the December 21, 2010, Asset Purchase Agreement By and Among the Hospital Authority of Albany-Dougherty County, Phoebe Putney Health Systems, Inc., Phoebe North, Inc., and Palmyra Park Hospital, Inc.
9. All documents that refer or relate in any way to the Resolution of the Hospital Authority Approving Proposed Transaction with Palmyra Park Hospital, Inc; Authorizing Waiver of Lease Provision; Approving Management Agreement; and Declaring Official Intent Relative to Possible Tax Exempt Financing, dated December 21, 2010.
10. All documents that refer or relate in any way to the Resolution of the Hospital Authority Relating to Funding of Authority Obligations Under the Asset Purchase Agreement, Development of a Lease, and Amendment of Asset Purchase Agreement, dated February 2, 2011.
11. All documents that refer or relate in any way to the Resolution of Hospital Authority Approving Execution and Delivery of Second Amendment to Asset Purchase Agreement and Approving Basic Terms and Provisions to Be Included in Any Revised Lease With Phoebe Putney Memorial Hospital, Inc., dated April 4, 2011.
12. All documents that refer or relate in any way to the Resolution of Hospital Authority, dated May 5, 2011.
13. All documents that refer or relate in any way to the draft Management Services Agreement, PP-HC-00002950.
14. All documents that refer or relate in any way to the meetings of the Hospital Authority on or about December 21, 2010, February 2, 2011, April 4, 2011, or May 5, 2011.
15. All documents that refer or relate in any way to the letter from the Baudino Law Group to Mr. Joseph A. Sowell, III, Senior Vice President and Chief Development Officer, HCA Inc., dated November 10, 2010. This specification includes drafts and underlying research and analysis you conducted in preparation of this letter.
16. All documents that refer or relate in any way to the letter from the Sovereign Group to Mr. Joseph A. Sowell, III, Senior Vice President and Chief Development Officer, HCA Inc., dated November 10, 2010.

Subpoena *Duces Tecum* Issued to the Baudino Law Group, PLC (Docket No. 9348)

DEFINITIONS

- A. The terms “Acquisition” or “relevant transaction” mean the acquisition pursuant to the December 21, 2010, Asset Purchase Agreement By and Among The Hospital Authority of Albany-Dougherty County, Phoebe Putney Health Systems, Inc., Phoebe North, Inc., and Palmyra Park Hospital, Inc.
- B. The terms “Commission” or “FTC” mean the Federal Trade Commission.
- C. The terms “the Company” or “you” mean the Baudino Law Group, PLC, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.
- D. The term “documents” means all computer files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term “documents” includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person's files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.
1. Unless otherwise specified, the term “documents” excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues.
 2. The term “computer files” includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Complaint Counsel’s need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Complaint Counsel representatives identified on the last page of this request. The Complaint Counsel representatives will consider modifying this instruction to:

Subpoena *Duces Tecum* Issued to the Baudino Law Group, PLC (Docket No. 9348)

- (a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
 - (b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain specifications identified by Complaint Counsel representatives; or
 - (c) include other proposals consistent with Complaint Counsel policy and the facts of the case.
- E. The terms “each,” “any,” and “all” mean “each and every.”
- F. The term “entity” means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.
- G. The terms “HCA/Palmyra,” “Palmyra,” “Palmyra Medical Center,” and “Palmyra Park Hospital, Inc.” include HCA Inc., Palmyra Park Hospital, Inc., their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.
- H. The term “health plan” means any health maintenance organization, preferred provider arrangement or organization, managed healthcare plan of any kind, self-insured health benefit plan, other employer or union health-benefit plan, Medicare, Medicaid, TRICARE, or private or governmental healthcare plan or insurance of any kind.
- I. The term “hospital” means a facility that provides the relevant services as defined herein.
- J. The term “Hospital Authority” means the Hospital Authority of Albany-Dougherty County.
- K. The term “minimum viable scale” means the smallest service volume at which average costs equal the price currently charged for the relevant services. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

Subpoena Duces Tecum Issued to the Baudino Law Group, PLC (Docket No. 9348)

- L. The term “operate” with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility’s governing board or body, or otherwise directly or indirectly control the facility or unit.
- M. The terms “or” and “and” have both conjunctive and disjunctive meanings.
- N. The term “person” includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- O. The terms “Phoebe Putney” and “Phoebe Putney Memorial Hospital” include Phoebe Putney Health Systems, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc., their domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.
- P. The term “plans” means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.
- Q. The terms “this proceeding” or “this matter” mean *In the Matter of Phoebe Putney Health Systems, Inc.*, Docket No. 9348, before the Federal Trade Commission.
- R. The term “provider” means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, or other healthcare facilities.
- S. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- T. The term “relevant area” means the area encompassing Baker, Dougherty, Lee, Mitchell, Terrell, and Worth Counties in Georgia.
- U. The term “relevant service” means general acute care hospital services (*e.g.*, the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities, excluding the treatment of mental illness or substance abuse or long-term services such as skilled nursing care), collectively and individually.
- V. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between the Company and any other person.

Subpoena *Duces Tecum* Issued to the Baudino Law Group, PLC (Docket No. 9348)

- W. The term “third party” means any person, individual, company, industry participant, or any entity other than Phoebe Putney Health Systems, Inc., Phoebe Putney Memorial Hospital, Inc., and the Commission, including the Company receiving this subpoena *duces tecum*.

INSTRUCTIONS

For the purposes of this subpoena *duces tecum*, the following instructions apply:

- A. All documents should be produced within 21 days of the issuance of this subpoena.
- B. Unless modified by agreement with Complaint Counsel, this subpoena requires a complete search of all the files of the Company. The Company shall produce all responsive documents, wherever located, that are in the actual or constructive possession, custody, or control of the Company and its representatives, attorneys, and other agents, including, but not limited to, consultants, accountants, lawyers, or any other Person retained by, consulted by, or working on behalf or under the direction of the Company.
- C. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2007, to the present. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company’s fiscal year data indicating the twelve month period covered, and provide the Company’s best estimate of calendar year data.
- D. This subpoena request is continuing in nature and shall be supplemented in the event that additional documents responsive to this request are created, prepared, or received between the time of the Company’s initial response and trial.
- E. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information (“PII”) or Sensitive Health Information (“SHI”). For purposes of this subpoena, PII means an individual’s Social Security Number alone; or an individual’s name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver’s license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this subpoena, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company shall substitute for the masked information a unique patient identifier that is different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient.

Subpoena *Duces Tecum* Issued to the Baudino Law Group, PLC (Docket No. 9348)

Otherwise, the Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

F. Forms of Production: The Company shall submit documents as instructed below absent written agreement of Complaint Counsel.

1. Documents stored in electronic or hard copy format in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:
 - (a) Submit Microsoft Access, Excel, and PowerPoint documents in native format with extracted text and metadata;
 - (b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and
 - (c) Submit all hard copy documents in image format accompanied by OCR.
2. For each document submitted in electronic format, include the following metadata fields and information:
 - (a) For documents stored in electronic format other than email: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, and MD5 or SHA Hash value;
 - (b) For emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);
 - (c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and MD5 or SHA Hash value; and

Subpoena *Duces Tecum* Issued to the Baudino Law Group, PLC (Docket No. 9348)

- (d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.
3. If the Company intends to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this subpoena, or if the Company's computer systems contain or utilize such software, the Company must contact a Complaint Counsel representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this subpoena.
 4. For each Specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.
 5. Submit electronic files and images as follows:
 - (a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;
 - (b) For productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats; and
 - (c) All documents produced in electronic format shall be scanned for and free of viruses. Complaint Counsel will return any infected media for replacement, which may affect the timing of the Company's compliance with this subpoena *duces tecum*.
 6. All documents responsive to this subpoena, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
 - (a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:
 - i. If in their original condition hard copy documents were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers, or containers, they shall be produced in such form,

Subpoena *Duces Tecum* Issued to the Baudino Law Group, PLC (Docket No. 9348)

and any documents that must be removed from their original folders, binders, covers, or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover, or container from which such documents came; and

- ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;
 - (b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
 - (c) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Company must submit the original document, a like-colored photocopy, or a JPEG format image);
 - (d) Shall be marked on each page with corporate identification and consecutive document control numbers;
 - (e) Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct and complete copies of the original documents; and
 - (f) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed hard copy and in machine-readable form (provided that Complaint Counsel representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Complaint Counsel representatives will provide a sample index upon request.
- G. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies.

Subpoena *Duces Tecum* Issued to the Baudino Law Group, PLC (Docket No. 9348)

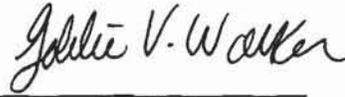
Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Complaint Counsel or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

- H. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy, but the Company has reason to believe such documents have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
- I. In order for the Company's response to this subpoena to be complete, the attached certification form must be executed by the official supervising compliance with this subpoena, notarized, and submitted along with the responsive materials.
- J. If the Company believes that the required search or any other part of this subpoena can be narrowed in a way that is consistent with Complaint Counsel's need for information, it is encouraged to discuss such possible modifications with the Complaint Counsel representatives identified in Part K of these instructions below. All modifications to this subpoena *duces tecum* must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(c).
- K. Any questions relating to the scope or meaning of anything in this subpoena or suggestions for possible modifications thereto should be directed to Thomas H. Brock at 202-326-2813, or Goldie V. Walker at 202-326-2919. The response to the subpoena shall be addressed to the attention of Thomas H. Brock, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission. If you wish to submit your

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response by United States mail, please call one of the staff listed above for mailing instructions.

Respectfully submitted,



Edward D. Hassi, Esq.
Thomas H. Brock, Esq.
Goldie V. Walker, Esq.
Complaint Counsel
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, N.W.
Washington, DC 20580
Telephone: (202) 326-2470
Facsimile: (202) 326-2286

Dated: June 10, 2011

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CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the subpoena *duces tecum* has been prepared by me or under my personal supervision from records of the Baudino Law Group, PLC and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If the Commission uses such copies in any court or administrative proceeding, the Baudino Law Group, PLC will not object based upon the Commission not offering the original document.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)

Subpoena *Duces Tecum* Issued to the Baudino Law Group, PLC (Docket No. 9348)

CERTIFICATE OF SERVICE

I certify that on June 10, 2011, I delivered by electronic mail and Federal Express Complaint Counsel's Subpoena *Duces Tecum* to:

Robert J. Baudino, Esq.
Baudino Law Group, PLC
2409 Westgate Drive
Albany, Georgia 31707
Email: baudino@baudino.com

I certify that on June 10, 2011, I delivered by electronic mail a copy of Complaint Counsel's Subpoena *Duces Tecum* to:

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Jennifer Rie, Esq.

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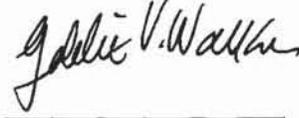
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Email: darrell@baudino.com

*Counsel for Respondent Hospital
Authority of Albany-Dougherty County*

By:



Goldie V. Walker, Esq.
Federal Trade Commission
Bureau of Competition