

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



In the Matter of)
)

OSF Healthcare System,)
a corporation, and)

Rockford Health System,)
a corporation.)

Docket No. 9349
PUBLIC

**RESPONDENTS OSF HEALTHCARE SYSTEM'S AND ROCKFORD HEALTH
SYSTEM'S MOTION TO COMPEL DEPOSITION AND DOCUMENTS DUE TO
COMPLAINT COUNSEL'S FAILURE TO PRESERVE AND PRODUCE RELEVANT
INFORMATION**

Pursuant to Rule 3.38(a) of the Federal Trade Commission's Rules of Adjudicative Practice and Paragraphs 4 and 5 of the Scheduling Order, Respondents OSF Healthcare System ("OSF") and Rockford Health System ("RHS") respectfully submit this Motion to Compel Deposition and Documents Due to Complaint Counsel's Failure to Preserve and Produce Relevant Information. In particular, Complaint Counsel apparently destroyed and, therefore failed to produce, certain documents constituting or relating to communications with third-parties (such as draft declarations) that they received, requested, and created during their investigation in this matter.

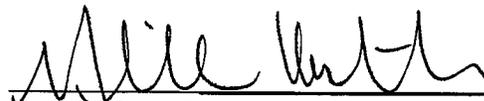
Respondents have been prejudiced by Complaint Counsel's conduct because they are unable to determine the potential scope and identity of those materials that have been improperly withheld or destroyed, inadvertently or intentionally, by Complaint Counsel.

Respondents have conferred in good faith with Complaint Counsel in an effort to obtain the requested deposition and documents without the Court's intervention. Respondents and

Complaint Counsel have been unable to reach an agreement. Therefore, Respondents respectfully move the Court for an Order requiring (a) the immediate production of all documents constituting or discussing communications by Complaint Counsel with third-parties during their investigation of the affiliation, including internal communications between Complaint Counsel, pursuant to the FTC's Rules of Practice and Respondents' discovery requests and (b) the scheduling of a deposition regarding all steps taken by Complaint Counsel, and anyone assisting them in the investigation, to preserve, collect and produce all documents relevant to their investigation of the affiliation pursuant to the FTC's Rules of Practice and Respondents' discovery requests, for the reasons set forth in Respondents' accompanying Memorandum in support of this motion. Respondents reserve their right to request additional relief following the requested deposition on this issue.

Dated: March 15, 2012

Respectfully submitted,



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**UNITED STATES OF AMERICA
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STATEMENT REGARDING MEET AND CONFER PURSUANT TO 16 C.F.R. § 3.22(g)

On February 27, 2012, Counsel for Respondent Rockford Health System, Nicole Castle, sent a letter to Kenneth Field, Complaint Counsel, regarding Complaint Counsel's failure to previously produce and preserve over thirty email communications between Complaint Counsel and ██████████, a third-party which had produced documents in response to a FTC subpoena during the investigation of this matter and is identified by Complaint Counsel on their final proposed witness list in this proceeding. (Exhibit A). On February 28, 2011, Mr. Field responded by letter to Ms. Castle and explained that the ██████████ documents no longer appear in the FTC's files and that Complaint Counsel were under no obligation to preserve and produce those documents. (Exhibit B).

On March 2, 2012, Counsel for Respondent OSF Healthcare System, Kristin Kurczewski, sent a letter to Mr. Field, regarding Complaint Counsel's failure to previously produce and preserve two draft declarations transmitted by Complaint Counsel to ██████████ ██████████, another third-party which had produced documents in response to a FTC subpoena during the investigation of this matter and is identified by Complaint Counsel on their final proposed witness list in this proceeding. (Exhibit C). On March 7, 2012, Mr. Field responded

by letter to Ms. Kurczewski and explained that although Complaint Counsel produced as part of their initial productions copies of one of the draft declarations, they did not produce the second draft declaration and also claimed that they were under no obligation to preserve and produce those documents. (Exhibit D).

On March 2, 2012, Ms. Kurczewski also sent a letter to Mr. Field regarding Complaint Counsel's failure to preserve and produce two draft declarations from [REDACTED], another third-party which had produced documents in response to a FTC subpoena during the investigation of this matter and is identified on Complaint Counsel's final proposed witness list in this proceeding. (Exhibit E). On March 6, 2012, Mr. Field responded by letter to Ms. Kurczewski and stated that the draft declarations no longer appear in FTC's files and that Complaint Counsel were under no obligation to preserve and produce those documents. (Exhibit F).

On March 7, 2012, Ms. Kurczewski sent a letter to Mr. Field regarding Complaint Counsel's failure to preserve and produce several documents from [REDACTED] [REDACTED], another third-party which had produced documents in response to a FTC subpoena during the investigation of this matter and is identified on Complaint Counsel's final proposed witness list in this proceeding. (Exhibit G). Mr. Field never specifically responded to that letter.

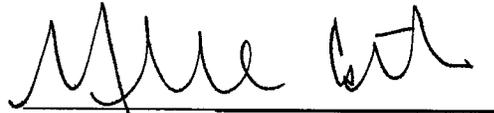
On March 8, 2012, Ms. Castle sent another letter to Mr. Field stating that given the number of recent discoveries of documents produced by third-parties in response to subpoenas *duces tecum* which were not produced to Respondents by Complaint Counsel, Respondents were increasingly concerned that Complaint Counsel's production of documents pursuant to the FTC's Rules of Practice and in response to Respondents' discovery requests was incomplete. (Exhibit H). Ms. Castle requested that Complaint Counsel agree to the relief sought in Respondents'

Motion to Compel Deposition and Documents Due to Complaint Counsel's Failure to Preserve and Produce Relevant Information ("Respondents' Motion").

Mr. Field replied via letter on March 12, 2011, expressing Complaint Counsel's belief that they had met all of their discovery and preservation obligations. (Exhibit I). As a result, Respondents and Complaint Counsel are unable to reach an agreement on the outstanding issues raised in Respondents' Motion.

Dated: March 15, 2012

Respectfully submitted,



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Attorneys for OSF Healthcare System

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In the Matter of

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a corporation, and**

**Rockford Health System,
a corporation.**

**Docket No. 9349
PUBLIC**

[PROPOSED] ORDER

Upon consideration of Respondents OSF Healthcare System's and Rockford Health System's Motion to Compel Deposition and Documents Due to Complaint Counsel's Failure to Preserve and Produce Relevant Information, and any opposition thereto,

IT IS HEREBY ORDERED that Respondents' Motion is GRANTED.

IT IS FURTHER ORDERED that Complaint Counsel shall identify a witness for a deposition regarding all steps taken by Complaint Counsel, and anyone assisting them in the investigation, to preserve, collect and produce all documents relevant to their investigation of the affiliation pursuant to the FTC's Rules of Practice and Respondents' discovery requests. The deposition shall be scheduled to take place no later than March 28, 2012.

IT IS FURTHER ORDERED that Complaint Counsel shall produce all documents constituting or discussing communications by Complaint Counsel with third-parties during its investigation of the affiliation, including internal communications between Complaint Counsel, pursuant to the FTC's Rules of Practice and Respondents' discovery requests.

CERTIFICATE OF SERVICE

I, Nicole L. Castle, hereby certify that I served a true and correct copy of the foregoing Public Version of Respondents OSF Healthcare System's and Rockford Health System's Motion to Compel Deposition and Documents Due to Complaint Counsel's Failure to Preserve and Produce Relevant Information, Statement Regarding Meet and Confer, and Proposed Order upon the following individuals by hand on March 15, 2012:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room 172
Washington, DC 20580

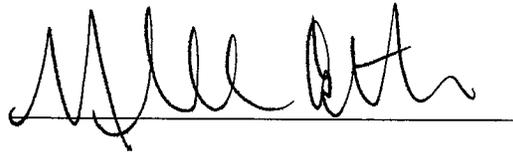
The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

I, Nicole L. Castle, hereby certify that I served a true and correct copy of the foregoing Public Version of Motion to Compel Deposition and Documents Due to Complaint Counsel's Failure to Preserve and Produce Relevant Information, Statement Regarding Meet and Confer, and Proposed Order upon the following individuals by electronic mail on March 15, 2012:

Matthew J. Reilly
Jeffrey H. Perry
Kenneth W. Field
Richard Cunningham, Esq.
Jeremy P. Morrison
Katherine A. Ambrogi
Andrea Zach
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Complaint Counsel

Dated: March 15, 2012

A handwritten signature in black ink, appearing to read 'Nicole L. Castle', written over a horizontal line.

Nicole L. Castle
Counsel for Respondent
Rockford Health System

**UNITED STATES OF AMERICA
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**RESPONDENTS OSF HEALTHCARE SYSTEM'S AND ROCKFORD HEALTH
SYSTEM'S MEMORANDUM IN SUPPORT OF MOTION TO COMPEL DEPOSITION
AND DOCUMENTS DUE TO COMPLAINT COUNSEL'S FAILURE TO PRESERVE
AND PRODUCE RELEVANT INFORMATION**

INTRODUCTION

Complaint Counsel had an obligation to preserve all documents relating to their investigation of the proposed affiliation between Respondents OSF Healthcare System (“OSF”) and Rockford Health System (“RHS”) at least as early as it became likely that the FTC would become involved in litigation regarding the affiliation. Complaint Counsel admit they failed to comply with that obligation, essentially conceding that they destroyed documents constituting and relating to their communications with third-parties likely to testify on Complaint Counsel’s behalf at trial. Moreover, they now wrongly deny an obligation to preserve them.

Complaint Counsel’s failure to preserve, collect, and produce documents relating to their communications with third-party witnesses as part of their mandatory initial disclosures and in response to Respondents’ discovery in this matter and in the related federal proceeding¹ is inexcusable, and highly prejudicial. It violates the Commission’s Rules of Adjudicative Practice (“Commission Rules”) and Complaint Counsel’s ethical duty to preserve documents in anticipation of litigation, and has prejudiced Respondents’ ability to prepare and present their defenses to the FTC’s complaint. Respondents continue to be prejudiced because they cannot determine the scope of documents or information that may have been impermissibly destroyed or wrongfully withheld from production. Accordingly, pursuant to Commission Rule 3.38(a), Respondents ask this Court to compel Complaint Counsel to produce a witness for deposition regarding all steps Complaint Counsel took to preserve, collect and produce documents relevant to their investigation and produce all documents constituting or discussing their communications with third-parties, including internal communications between Complaint Counsel.

¹ *Federal Trade Commission v. OSF Healthcare System and Rockford Health System*, No. 11-cv-50344 (“Federal Proceeding”), in which the FTC is seeking a preliminary injunction to prevent consummation of this transaction, is pending before the U.S. District Court for the Northern District of Illinois.

Complaint Counsel have provided no legitimate reason why, when conducting a full-phase investigation, contemplating a challenge to the transaction, communicating with potential witnesses, and providing those witnesses with draft declarations and materials used in other cases, they would not have an obligation to preserve and produce those highly relevant documents for discovery in this litigation as required by the discovery rules and the caselaw. Complaint Counsel's destruction and failure to produce has unfairly prejudiced Respondents' ability to depose witnesses² and to cross-examine them at the administrative trial.³

Respondents have spent considerable time piecing together the identity and nature of the materials Complaint Counsel should have, but did not, produce. Nevertheless, it is impossible for Respondents to ascertain the full extent to which Complaint Counsel destroyed or withheld responsive documents. Respondents' proposed relief is reasonably tailored to determine what documents Complaint Counsel destroyed or withheld, and why. Respondents will then propose more specific relief and remedies under Commission Rule 3.38.

LEGAL AUTHORITIES

Complaint Counsel "ha[ve] a duty, no less than any other party before [the] court, to ensure . . . that documents relevant to a case are preserved" at the point in time when litigation is reasonably anticipated. *United Med. Supply v. U.S.*, 77 Fed. Cl. 257, 274 (2007); *Voom HD Holdings, LLC v. EchoStar Satellite*, 5121N-1833, 2012 WL265833 at *7 (N.Y.S. Jan. 31, 2012).

A reasonable anticipation of litigation arises when an organization is "on notice of a credible

² This is not Complaint Counsel's first failure to produce relevant documents in this matter. (Exhibit J, Order Denying in Part and Granting in Part Respondents' Motion for Sanctions for Complaint Counsel's Failure to Timely Produce Information).

³ To the extent that Complaint Counsel choose to rely on deposition testimony from witnesses whose documents are the subject of this motion, instead of producing them to testify at trial, Respondents will be further prejudiced because they will not have had a fair opportunity to depose the witnesses about the missing documents.

probability” that it will “become involved in litigation,” is seriously contemplating litigation, or takes “specific actions to commence litigation.” *Med. Supply*, 77 Fed. Cl at 274. Once a party reasonably anticipates litigation, it must suspend its routine document retention and destruction policies and put in place a litigation hold to ensure the preservation of relevant documents. *Id.*; *Voom*, 2012 WL265833 at *7; *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212 (S.D.N.Y. Oct. 23, 2003). This duty can arise before litigation is filed. *Voom* at *6.

Commission Rule 3.31(b)(2) requires Complaint Counsel to produce a copy of all relevant documents within five days of Respondents’ answer to the complaint. 16 C.F.R. § 3.31(b)(2). As part of these initial disclosures and in response to Respondents’ discovery requests, the Commission Rules require that Complaint Counsel “search for materials that were collected or reviewed in the course of the investigation of the matter” and that are in the “possession, custody or control of the [offices] . . . that investigated the matter.” 16 C.F.R. § 3.31(c)(2).

FACTUAL BACKGROUND

Respondents entered into an affiliation agreement on January 31, 2011. (OSF Answer, ¶ 19). Respondents submitted their Hart-Scott-Rodino filings on February 11, 2011 (Exhibit K), and by February 15, 2011, Complaint Counsel were investigating the affiliation and discussing it with several managed-care organizations (“MCOs”). (Exhibits L-M). Following the FTC’s authorization of a full-phase investigation, Complaint Counsel issued Civil Investigative Demands (“CID”) to numerous MCOs in March 2011. (Exhibit N). On March 14, 2011, the FTC issued a request for additional information to Respondents. (Exhibit O).

The FTC continued its investigation and preparation for litigation. For example, on July 5, 2011, Complaint Counsel [REDACTED]

to counsel for [REDACTED] (Exhibit P). On July 19, 2011, Complaint
Counsel [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Exhibit Q). On July 28, 2011, [REDACTED]

[REDACTED]

[REDACTED] (Exhibit R). Complaint Counsel have included employees from
[REDACTED] on their proposed final witness list in this proceeding.

On September 23, 2011, [REDACTED] about an
investigational hearing the FTC was planning for [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Exhibit S).

On November 17, 2011, the FTC issued an administrative complaint challenging the
transaction. (Compl. at 1). The next day, Complaint Counsel filed a complaint in the Federal
Proceeding. On December 1, 2011, the court in the Federal Proceeding entered an order
requiring Complaint Counsel to produce by December 5, 2011, all “documents and materials
produced by . . . third-parties during the investigation of Defendants’ affiliation.” (Exhibit T).
Complaint Counsel represented that they had satisfied “the Commission’s obligations pursuant
to” that order in a letter to Respondents’ counsel. (Exhibit U). In addition, Complaint Counsel
responded to Respondents’ First Set of Interrogatories in the Federal Proceeding on January 9,
2012, stating that they had produced all “non-privileged, relevant, reasonably available,
responsive information” in their “possession, custody, or control” regarding communications

with and declarations for persons they contacted during their investigation of the affiliation. (Exhibit V).

Similarly, Commission Rules 3.31(b)(2) and 3.31(a) required Complaint Counsel to provide those documents with their initial disclosures and in response to Respondents' discovery requests. 16 C.F.R. § 3.31(a), (b)(2); Exhibit W. Again, Complaint Counsel represented to Respondents that they had fulfilled their obligations. (Exhibit X).

ARGUMENT

A. Complaint Counsel Had a Duty to Preserve Relevant Documents and Communications

Complaint Counsel had a duty to preserve their communications with third-parties during their investigation of the proposed affiliation. "It is the duty of the United States, no less than any other party before this court, to ensure, through its agents, that documents relevant to a case are preserved." *Med. Supply*, 77 Fed. Cl. at 274. As of February 14, 2011, Complaint Counsel knew there was a sufficient probability of litigation about the affiliation to trigger their duty to preserve documents relating to the investigation. (Exhibit L). By March 17, 2011, Complaint Counsel had launched a "full-phase investigation" of the transaction, including issuing CIDs, communicating with MCOs, issuing a second-request letter to Respondents, and retaining outside expert witnesses, who began working on expert reports that they submitted in the Federal Proceeding and this proceeding. (Exhibits L-Q; Y).

Thus, Complaint Counsel undeniably knew by no later than mid-March 2011, that there was, at the very least, a "credible probability" that litigation would ensue.⁴ Moreover, Complaint

⁴ Complaint Counsel rely on *FTC v. Lights of America*, No. 10-1333, 2012 WL 695008 (C.D. Cal. Jan. 20, 2012), an unpublished, non-binding opinion, for their assertion that they had no obligation to preserve relevant communications. Complaint Counsel, however, ignore the wealth of caselaw holding that the government is required to preserve such documents. Moreover, *Lights* is factually distinguishable. In *Lights*, the court

(continued...)

Counsel must have recognized the obligation to preserve the documents relating to their communications with third-parties in connection with this investigation, because they retained and produced to Respondents—albeit selectively—some documents that were created, received, or transmitted by the FTC as early as February 17, 2011. (Exhibit CC).

B. Complaint Counsel Failed to Preserve and Produce Relevant Third-Party Communications and Documents

Despite their legal and ethical obligation⁵ to preserve documents, Complaint Counsel failed to produce approximately 289 relevant communications with third-parties (of which Respondents are aware).⁶ (Exhibit L). The missing documents include communications between Complaint Counsel and third-parties, several declarations they drafted for third-parties, sample declarations they transmitted to third-parties, and sample deposition testimony they sent to third-parties. (Exhibits L-Q). These withheld or destroyed communications contain information that is relevant to the issues raised in the litigation and the weight the Court should afford MCO testimony.

The volume and tenor of the communications between Complaint Counsel and some MCOs raises questions about the bias and credibility of MCO testimony in this case. For example, Complaint Counsel failed to produce numerous documents revealing their close, collaborative relationship ██████████. (See e.g., ██████████ (attaching sample declarations and

rejected defendant's assertion that issuance of a CID alone was sufficient to give rise to a reasonable anticipation of litigation. *Id.* at *3. Here, Complaint Counsel's discovery program was consistent with their reasonable anticipation of litigation (e.g., the creation of expert reports, subpoena of documents, and communications with third-party witnesses for use in litigation).

⁵ D.C. R. Prof. Conduct 3.4.

⁶ Respondents anticipate that Complaint Counsel will raise, in defense of their spoliation of documents, a vendor error that arose in connection with RHS' production in response to the second request, which RHS promptly explained and cured. See Exhibit Z. Complaint Counsel's conduct is different – they acknowledge destruction of highly relevant documents and disclaim any obligation of preservation. In contrast, RHS destroyed no documents and upon discovering the error by its vendor, informed Complaint Counsel of the problem and produced the documents as quickly as they could be identified and processed.

materials from other enforcement actions to assist [REDACTED]).

Respondents received these documents from [REDACTED] just before their deposition of [REDACTED] in this proceeding, and only after [REDACTED]

[REDACTED].

Complaint Counsel prepared and transmitted to several MCOs drafts of declarations that MCOs ultimately signed and submitted in the Federal Proceeding and appear on Complaint Counsel's exhibit list for this proceeding. A comparison of Complaint Counsel's responses to Respondents' interrogatories (which asked Complaint Counsel how many drafts they sent to each third-party declarant) with the documents Complaint Counsel produced to Respondents demonstrates Complaint Counsel's failure to comply with their document preservation requirements. For example, although Complaint Counsel's interrogatory responses state that they sent only one draft declaration to [REDACTED], they actually sent two. (Exhibit V). Complaint Counsel also produced to Respondents one less [REDACTED] than they admitted sending. (Exhibit V). And Complaint Counsel attempted to hide two draft declarations prepared for [REDACTED], enabling Complaint Counsel to withhold those drafts yet state in its interrogatory responses that they only "produced" [REDACTED]. (Exhibit BB).

Respondents' belated receipt from MCOs of some of the documents Complaint Counsel destroyed or withheld does not justify Complaint Counsel's conduct or cure the prejudice Respondents have suffered. And, Respondents do not yet know to what extent Complaint Counsel have wrongfully withheld or destroyed additional materials.

C. Complaint Counsel's Failure to Produce the Relevant Documents and Communications Is Unjustifiable

Complaint Counsel's disavowal of their obligation to preserve the MCO documents in question is a confession of wrongful conduct. (Exhibit F). The documents the FTC claims not to have preserved were received or transmitted by the FTC at the time Complaint Counsel were investigating this merger, soliciting testimony and declarations from third-parties (indeed, suggesting the words for their mouths), and providing third-parties with materials from prior enforcement actions. (Exhibit L). Undeniably, Complaint Counsel were in the throes of preparation for litigation. Moreover, Complaint Counsel produced some relevant documents received and/or dated during the very time period when they were destroying other relevant documents.⁷ For example, Complaint Counsel produced a handful of documents reflecting communications with ██████████, but claims they had no duty to preserve and produce the 122 additional communications with ████████ between April and October.⁸ (Exhibit L).

Respondents do not know and cannot presently determine the breadth of Complaint Counsel's disregard of their discovery obligations. Accordingly, this Court should allow discovery concerning the preservation, collection and production of documents relating to Complaint Counsel's investigation of Respondents' affiliation. An Order requiring Complaint Counsel to provide internal communications regarding third-parties and produce a witness to testify to Complaint Counsel's preservation and collection policies during their investigation will enable Respondents to determine the scope of the destroyed or withheld documents. It will also allow Respondents to determine the relief necessary to address the prejudice from the destruction

⁷ Additional examples of Complaint Counsel's selective preservation and production are detailed in Exhibit L.

⁸ ████████ production included a document dated October 7, 2011. Complaint Counsel arbitrarily produced a document dated five days later, but claims to have destroyed, and did not produce, the earlier communication.

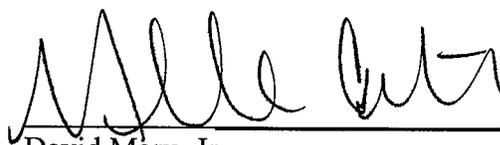
or wrongful withholding of documents.⁹ The Order will prevent Complaint Counsel from obtaining an unfair advantage by depriving Respondents of the ability to review, analyze, and incorporate the destroyed and withheld documents into their defense. 16 C.F.R. § 3.38(b)(4); *In re Int'l Tel. & Tel. Corp.*, 104 F.T.C. 280, 449 (1984).

CONCLUSION

Complaint Counsel's failure to preserve, upon reasonable anticipation of litigation, and produce all documents relevant to this litigation is indefensible. Respondents respectfully request that the Court grant their Motion.

Dated: March 15, 2012

Respectfully submitted,



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⁹ Respondents reserve the right to ask for additional relief pending the information gained from the requested discovery.

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Attorneys for OSF Healthcare System

CERTIFICATE OF SERVICE

I, Nicole L. Castle, hereby certify that I served a true and correct copy of the foregoing Public Version of Respondents OSF Healthcare System's and Rockford Health System's Memorandum in Support of its Motion to Compel Deposition and Documents Due to Complaint Counsel's Failure to Preserve and Produce Relevant Information upon the following individuals by hand on March 15, 2012:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room 172
Washington, DC 20580

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

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Complaint Counsel

Dated: March 15, 2012

A handwritten signature in black ink, appearing to read "Nicole L. Castle", is written over a horizontal line.

Nicole L. Castle
Counsel for Respondent
Rockford Health System

DM_US 32388374-1.046498.0021

EXHIBIT A

FILED
IN CAMERA

EXHIBIT B



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV Division
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

February 28, 2012

Nicole Castle, Esq.
McDermott Will & Emery LLP
600 13th Street, N.W.
Washington, D.C. 20005

Re: In the Matter of OSF Healthcare System and Rockford Health System, Docket
No. 9249, and FTC v. OSF Healthcare System and Rockford Health System,
3:11-cv-50344 (N.D. Ill.)

Dear Ms. Castle:

I write in response to your letter of February 27, 2012 regarding documents recently produced to Respondents by UnitedHealthcare Group ("United") in connection with the ongoing administrative litigation referenced above. In your letter, you identify five unique email communications between Federal Trade Commission staff and in-house attorneys for United, the most recent of which date from September 2011. You also identify additional copies of those emails produced by United within chains of emails that were partially redacted as privileged communications involving United's attorneys. All of the documents were produced to Respondents by United no later than February 22, 2012 and counsel for Respondents questioned Michelle Lobe of United about the documents during her February 24, 2012 deposition.

The five unique email communications you identify all predate by several weeks Respondents' first document productions during the investigative phase of this matter, and reflect communications made well in advance of FTC staff's enforcement recommendation and the Commission's subsequent consideration of that recommendation. The five emails do not appear in the FTC's files and, based on our reasonable search, did not appear in our files at the time of our initial disclosures in the federal and administrative proceedings. The productions in both proceedings were complete and consistent with our obligations under FTC policies and applicable discovery rules. The FTC was under no obligation to preserve and produce the documents that you identify in your letter.

Please feel free to contact me at (202) 326-2868 if you have any additional questions.

Regards,

Kenneth W. Field /SS

Kenneth W. Field

EXHIBIT C

FILED
IN CAMERA

EXHIBIT D

FILED
IN CAMERA

EXHIBIT E

FILED
IN CAMERA

EXHIBIT F

FILED
IN CAMERA

EXHIBIT G

FILED
IN CAMERA

EXHIBIT H

McDermott Will & Emery

Boston Brussels Chicago Düsseldorf Houston London Los Angeles Miami Milan
Munich New York Orange County Paris Rome Silicon Valley Washington, D.C.
Strategic alliance with MWE China Law Offices (Shanghai)

Nicole L. Castle
Associate
ncastle@mwe.com
202-756-8158

March 8, 2012

VIA E-MAIL

Kenneth Field, Esq.
Federal Trade Commission
Bureau of Competition
Mergers IV Division
601 New Jersey Avenue, N.W.
Washington, DC 20580

Re: In the Matter of OSF Healthcare System and Rockford Health System, Docket No. 9349

Dear Ken:

On February 27, 2012, I wrote to you regarding documents that were produced by United Healthcare, but that were not previously produced by Complaint Counsel. Subsequently, Kristin Kurczewski wrote you several letters regarding documents that were not produced by Complaint Counsel relating to Humana, BCBS, and Coventry. As I explained in my letter and Ms. Kurczewski has explained in her subsequent letters, the growing number of documents absent from the FTC's productions continues to raise concern that the FTC's production is incomplete.

I understand that your position is that the FTC's productions in both the federal court litigation and the pending Part 3 administrative proceeding were complete, that certain documents in question no longer exist in the FTC's files, and that the FTC had no obligation to preserve the documents at issue. Respondents do not agree that the FTC's productions were complete or that the FTC had no obligation to preserve the documents identified in my and Ms. Kurczewski's letters.

Respondents' questions regarding the United Healthcare, Humana, BCBS, and Coventry documents that were "missing" from Complaint Counsel's document productions follow in the wake of the FTC's admitted failure to produce at least some payor claims data and inability to confirm its questionable representations that it timely produced all payor claims data in response to Respondents' discovery requests. As a result, Respondents have serious concerns about Complaint Counsel's apparent destruction of documents relevant to the litigation that it had an obligation to retain, as well as the nature, scope and thoroughness of Complaint Counsel's search for documents and data responsive to Respondents' discovery requests in both proceedings.

In order to determine whether the FTC has failed to preserve and produce documents in addition to those identified in my and Ms. Kurczewski's letters, Respondents request that Complaint

U.S. practice conducted through McDermott Will & Emery LLP.

600 Thirteenth Street, N.W. Washington, D.C. 20005-3096 Telephone: +1 202 756 8000 Facsimile: +1 202 756 8087 www.mwe.com

Kenneth Field, Esq.
March 8, 2012
Page 2

Counsel produce a 30(b)(6) deposition witness to testify regarding the steps taken by the FTC to preserve and collect documents relevant to its investigation of the affiliation. Additionally, Respondents request that the FTC produce all internal communications relating to contacts between Complaint Counsel or representatives of the Bureau of Economics and any third party during the course of the FTC's investigation of the affiliation and the ensuing litigation.

Please let me know whether Complaint Counsel will agree to this production and deposition by noon on Friday, March 9. Otherwise, Respondents consider our meet and confer obligations on these issues to be completed and will raise this issue with Judge Chappell.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicole L. Castle". The signature is fluid and cursive, with a large initial "N" and a distinct "C" at the end.

Nicole L. Castle

cc: David Marx, Esq.
Jeffrey Brennan, Esq.
Alan Greene, Esq.
Kristin Kurczewski, Esq.

EXHIBIT I



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Bureau of Competition
Mergers IV Division
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

March 12, 2012

VIA E-MAIL

Nicole Castle, Esq.
McDermott Will & Emery LLP
600 13th Street, N.W.
Washington, D.C. 20005

Re: In the Matter of OSF Healthcare System and Rockford Health System, Docket No. 9249, and FTC v. OSF Healthcare System and Rockford Health System, 3:11-cv-50344 (N.D. Ill.)

Dear Ms. Castle:

I write in response to your letter of March 8, 2012, requesting that "Complaint Counsel produce a 30(b)(6) deposition witness to testify regarding the steps taken by the FTC to preserve and collect documents relevant to investigation of the affiliation." You also request that "the FTC produce all internal communications relating to contacts between Complaint Counsel or representatives of the Bureau of Economics and any third party during the course of the FTC's investigation of the affiliation and the ensuing litigation." For the reasons set forth below, Complaint Counsel declines your requests.

Your request is premised on Respondents' mistaken view that Complaint Counsel had a preservation obligation at the time of certain communications produced to Respondents by third parties in this proceeding and discussed in letters sent by Respondents to the FTC on February 27, March 2, and March 7, 2012. As I have previously explained, the FTC was under no obligation to preserve or produce those documents at the time of those communications, which occurred during the pendency of the FTC's investigation and predated by weeks and even months Respondents' first document productions in the investigation. As an investigatory agency, the FTC issues requests for information in order to determine whether to proceed with an enforcement action. Here, the issuance of the second request to the Respondents did not trigger an obligation on the part of the FTC to preserve documents. See *FTC v. Lights of America*, 2012 U.S. Dist. LEXIS, at *12 (C.D. Cal. Jan. 20, 2012) (litigation not probable where FTC issued CID and eventual defendant had not yet provided documents needed to assess possible violation of FTC Act).

Because the FTC has, in good faith, complied with its preservation and production obligations, Respondents are unable to support their request for additional discovery. Moreover,

Letter to N. Castle, Esq.
March 12, 2012
Page 2

Respondents have not shown that any relevant documents are missing or that Respondents have been prejudiced. Respondents have received the documents in question, either from the FTC itself or from third parties. In addition, Respondents have had ample opportunity in discovery to depose representatives of these third parties, including about the allegedly missing documents. Thus, even if relevant documents were missing, Respondents' opportunity to obtain evidence from other sources precludes your request for additional discovery. See *In re Delta/Airtran Baggage Fee Antitrust Litigation*, 770 F. Supp. 2d 1299, 1309, 1311 (N.D. Ga. 2011) (denying sanctions where evidence available via depositions).

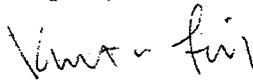
You also cite Complaint Counsel's failure to produce certain payor claim data as somehow supporting your request for additional discovery. As Judge Chappell determined, however, that failure was inadvertent, and he denied Respondents' request for sanctions accordingly. Respondents cannot use Complaint Counsel's innocent conduct there to bootstrap its requests for further discovery here.

Your request for the internal communications between Complaint Counsel and BE is also improper. Under the Commission's Rules, "[n]either complaint counsel, respondent, nor a third party receiving a discovery request under these rules is required to search for materials generated and transmitted between an entity's counsel (including counsel's legal staff or in-house counsel) and not shared with anyone else, or between complaint counsel and non-testifying Commission employees, unless the Administrative Law Judge determines there is good cause to provide such materials." 16 C.F.R. § 3.31(c)(2). As shown above, Respondents have no good cause for obtaining these internal communications.

In short, Respondents have not shown that Complaint Counsel violated any preservation obligations, and the complete lack of proof that relevant evidence is missing or that Respondents have been prejudiced makes any discovery into the steps taken by the FTC to preserve and collect documents relevant to this investigation entirely unjustified. Complaint Counsel accordingly declines to produce a witness for a 30(b)(6) deposition or to produce internal communications.

Please feel free to contact me at (202) 326-2868 if you have any additional questions.

Regards,



Kenneth W. Field

EXHIBIT J

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

In the Matter of)
)
OSF Healthcare System,)
a corporation, and)
)
Rockford Health System,)
a corporation,)
Respondents.)

DOCKET NO. 9349

**ORDER DENYING RESPONDENTS' MOTION FOR SANCTIONS FOR
COMPLAINT COUNSEL'S FAILURE TO TIMELY PRODUCE INFORMATION**

I.

On February 22, 2012, Respondents OSF Healthcare System and Rockford Health System ("Respondents") filed a Motion for Sanctions for Complaint Counsel's Failure to Timely Produce Information. ("Motion"). Complaint Counsel filed their Opposition on February 29, 2012. Respondents' Motion is accompanied by a Statement Regarding Meet and Confer, as required by Commission Rule 3.22(g). For the reasons set forth below, Respondents' Motion is DENIED. However, due to the circumstances involved, Respondents will be afforded the relief set forth in Part IV below.

II.

A.

Respondents filed their motion pursuant to Rule 3.38(b) of the Federal Trade Commission's Rules of Practice and Paragraphs 4 and 5 of the Scheduling Order. Respondents charge that Complaint Counsel failed to timely produce certain third party managed care organization claims data ("MCO claims data") received during the course of Complaint Counsel's pre-Complaint investigation of this case and that this failure to timely produce the MCO claims data has prejudiced Respondents' ability to present their defense.

In support of their motion, Respondents recite the following:

Commission Rule 3.31(b)(2) requires Complaint Counsel "within 5 days of receipt of a respondent's answer to the complaint and without awaiting a discovery request" to provide "[a] copy of . . . all documents and electronically stored information . . . in the possession, custody or

control of the Commission . . . that are relevant to the allegations of the Commission's complaint, to the proposed relief, or to the defenses of the respondent." 16 C.F.R. § 3.31(b)(2).

Both Respondents filed their Answers to the Complaint on December 12, 2011.

Five business days from December 12, 2011 is December 19, 2011.

Pursuant to the scheduling order entered in the proceeding for a temporary restraining order and preliminary injunction, *FTC v. OSF Healthcare System and Rockford Healthcare System*, No. 3:11-cv-50344 (N.D. Ill.) ("federal district court proceeding"), Complaint Counsel was required to "produce, for inspection and copying, all . . . documents and materials provided by . . . third parties during the investigation of Defendants' affiliations . . ." by December 5, 2011.

Complaint Counsel had requested claims data from numerous MCOs in March 2011.

Complaint Counsel produced materials to Defendants in the federal district court proceeding on November 29, December 5, and December 6, 2011.

Complaint Counsel produced materials in this proceeding on December 19, 2011. In Complaint Counsel's December 19, 2011 letter to Respondents accompanying that document production, Complaint Counsel stated, "the enclosed materials, together with materials previously produced in connection with the Federal District Court matter, constitute Complaint Counsel's full and complete initial disclosures pursuant to Federal Trade Commission Rule 3.31."

Respondents reviewed Complaint Counsel's productions and found claims data from BlueCross BlueShield of Illinois ("BCBS-IL"), but did not locate claims data from Aetna, Cigna, Coventry, ECOH, Humana, or United.

Respondents issued subpoenas in this administrative proceeding to certain MCOs requesting claims data on December 21, 2011.

In response to those subpoenas, certain MCOs informed Respondents on January 6, 2012, that they had previously produced the requested claims data to Complaint Counsel in response to Civil Investigative Demands issued by the FTC as part of their investigation.

Thereafter, Respondents reviewed the FTC productions again to try to locate the non-BCBS-IL MCO claims data.

On January 31, 2012, Respondents contacted Complaint Counsel to ask where Respondents could locate the MCO claims data within Complaint Counsel's prior productions.

In response, on January 31, 2012, Complaint Counsel produced a hard drive containing MCO claims data.¹

Respondents assert that the six week delay from the date on which Complaint Counsel was obligated to produce the MCO claims data (December 19, 2011) and the date on which Complaint Counsel did produce the MCO claims data (January 31, 2012) has prejudiced Respondents' ability to review and analyze the MCO claims data as part of preparing their defense, especially given the expedited nature of this proceeding. As a remedy, Respondents seek an Order precluding Complaint Counsel from introducing into evidence any opinions or testimony based upon analysis of any MCO claims data.

B.

Complaint Counsel contends that because Respondents found claims data from BCBS-IL, but did not find claims data from other MCOs, and because Complaint Counsel's production also included previously issued Civil Investigative Demands ("CIDs") requesting similar data from other health plans operating in the Rockford-area, Respondents should have been aware, shortly after receiving Complaint Counsel's productions on November 29, December 5, and December 6, 2011, that Complaint Counsel likely possessed such data. In addition, Complaint Counsel points out that Respondents acknowledged that certain MCOs informed Respondents on January 6, 2012, that they had produced claims data to the FTC. Lastly, Complaint Counsel states that Respondents did not contact Complaint Counsel regarding the MCO claims data until January 31, 2012. When Respondents did contact Complaint Counsel about the MCO claims data, Complaint Counsel produced it on the same day.

By letter dated February 15, 2012, Complaint Counsel advised Respondents that Complaint Counsel had reviewed its records regarding Complaint Counsel's productions to Respondents and determined that on November 29, 2011, Complaint Counsel had provided Respondents with all claims data from BCBS-IL, Humana, ECOH, and inpatient claims data from United. Complaint Counsel's February 15, 2012 letter further stated that it could not confirm whether it had previously provided claims data from Aetna, Cigna, and Coventry, and outpatient claims data from United.

Complaint Counsel asserts that because the claims data at issue contains highly sensitive patient health information, it is subject to strict protocols at the FTC that prevent

¹ Respondents fail to explain why, upon receiving confirmation on January 6, 2012 from two MCOs that those MCOs had, in fact, previously produced claims data to Complaint Counsel during the pre-hearing investigation, Respondents did not immediately contact Complaint Counsel to inquire about the missing data.

Complaint Counsel from accessing it directly. Complaint Counsel followed the established protocols and requested that all data be copied and produced as required, and Complaint Counsel believed in good faith that Respondents had timely received all of the data. Thus, Complaint Counsel asserts, its failure to produce all claims data was entirely inadvertent.

Complaint Counsel acknowledges that the MCO claims data is relevant and, once analyzed using econometric techniques, may prove probative to central issues in this matter. Thus, Complaint Counsel urges that the relief Respondents seek - the exclusion of all health plan claims data from the evidentiary record - is extraordinary. Complaint Counsel further argues that exclusion of the MCO claims data would be a particularly drastic sanction in light of the fact that Complaint Counsel's failure to timely produce was inadvertent, was cured as soon as it was brought to Complaint Counsel's attention, and could have been cured sooner if Respondents had brought the matter to Complaint Counsel's attention at the time Respondents were or should have been aware that Complaint Counsel's production likely was incomplete. Complaint Counsel urges an alternative remedy of allowing Respondents additional time to analyze the data.

III.

The MCO claims data is comprised of the actual claims that Rockford-area hospitals submitted to MCOs for payment for services provided to their members along with the actual reimbursements the MCOs paid for hospitals for those services. MCO claims data is, therefore, relevant to the allegations of the Commission's complaint or to the defenses of the Respondents and thus should have been produced to Respondents by December 19, 2011, pursuant to Commission Rule 3.31(b)(2).

Pursuant to Commission Rule 3.38, if a party fails to comply with any discovery obligation, the aggrieved party may file a motion requesting that the Administrative Law Judge take "action in regard thereto as is just, including but not limited to the following: . . . [r]ule that the party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon . . . the documents or other evidence, or upon any other improperly withheld or undisclosed materials" 16 C.F.R. § 3.38(b)(4).

Accepting the facts represented by each party summarized above as true, it would not be "just" to issue an order precluding Complaint Counsel from introducing into evidence any opinions or testimony based upon analysis of any MCO claims data. The error appears to have been inadvertent and Complaint Counsel produced the MCO claims data the same day Respondents called the error to Complaint Counsel's attention. Because Respondents had received from Complaint Counsel claims data from BCBS-IL and also received copies of Complaint Counsel's previously issued CIDs, by December 19, 2011, Respondents should have been aware that Complaint Counsel likely possessed other MCO claims data and had failed to produce such data. Certainly, by January 6, 2012, when Respondents were informed by two MCOs that those MCOs had previously produced claims data to Complaint Counsel, Respondents should have been aware that Complaint Counsel had such data, but failed to produce it. Respondents provide no credible explanation for why they made no inquiries to Complaint Counsel prior to January 31, 2012.

A sanction precluding Complaint Counsel from introducing into evidence any opinions based upon analysis of any MCO claims data – including an analysis of claims data from BCBS-IL, which Respondents did have on December 19, 2011 – is overly broad and unreasonable under these circumstances. However, in fairness, Respondents will be allowed additional time to analyze the MCO claims data. Such relief is appropriately tailored to mitigate any prejudice from the delayed production of the MCO claims data at issue.

Respondents contend that they have lost six weeks (from December 19, 2011 to January 31, 2012) in a compressed pre-hearing discovery period, during which they and their experts could have analyzed the voluminous MCO claims data for potential incorporation into their defense. The time between the date on which Respondents should have received the MCO claims data (December 19, 2011) and the date on which Respondents' expert reports are due (March 9, 2012) is 81 days. Eighty-one days from January 31, 2012 is April 23, 2012. Trial in this matter is set to begin on April 17, 2012, and may not be extended by the Administrative Law Judge.² Thus, to allow Respondents' expert(s) an additional six weeks that Respondents contend they lost to analyze the MCO claims data is not feasible.

Complaint Counsel has proposed that Respondents be provided with 71 days from January 31, 2012 and that Respondents' expert, Dr. Noether, may submit an additional expert report by April 11, 2012, presenting analyses using any MCO claims data, provided that Complaint Counsel would have an opportunity to depose Dr. Noether for up to two additional hours on the additional report. Complaint Counsel states that this proposal would give Dr. Noether as much time with the data as Complaint Counsel's economic expert, Dr. Cory Capps, will have, and thus directly addresses the prejudice Respondents claim to have suffered.

IV.

Respondents have not proposed an alternative remedy to their request for an order precluding Complaint Counsel from introducing into evidence any opinions or testimony on any MCO claims data. In order to ameliorate any prejudice to Respondents and to reasonably tailor the remedy to the asserted prejudice, it is hereby ORDERED that:

Respondents' expert(s) shall have until April 11, 2012, to produce any supplemental reports(s) presenting analyses using MCO claims data;

Complaint Counsel shall have an opportunity to depose Respondents' expert(s), limited to any supplemental report(s) and up to two hours in duration, to be scheduled at a time and location convenient for Respondents;
and

Complaint Counsel shall not have an opportunity to produce a report in rebuttal to Respondents' expert(s)' supplemental report(s).

² Pursuant to Commission Rule 3.41(b), the date for the evidentiary hearing set by the Commission may not be extended except upon order of the Commission.

For the reasons set forth above, Respondents' request for an order precluding Complaint Counsel from utilizing the MCO claims data at trial is DENIED.

ORDERED:

Dm Chappell
D. Michael Chappell
Chief Administrative Law Judge

Date: March 2, 2012

EXHIBIT K

FILED
IN CAMERA

EXHIBIT L

Documents Not Produced or Selectively Produced by Complaint Counsel¹

#	Date	From	To	Third Party UnitedHealthcare	FTC
1.	2/11/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-01591	Not Produced
2.	2/11/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-01592-93	Not Produced
3.	2/15/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-01592-93	Not Produced
4.	2/23/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-01594-95	Not Produced
5.	2/24/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01613-14	Not Produced
6.	2/24/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United -01619-20	Not Produced
7.	2/24/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United -01633	Not Produced
8.	2/24/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United -01655	Not Produced
9.	2/24/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01662-63	Not Produced
10.	3/16/2011	Field, Kenneth	Williams, Teonta	FTC_OSF-United -01664	Not Produced
11.	3/16/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01709	Not Produced
12.	3/16/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United -01710	Not Produced

¹ This list of documents is not comprehensive and is intended to be for illustrative purposes only. As noted in the Memorandum in Support of Motion to Compel Deposition and Documents Due to Complaint Counsel's Failure to Preserve and Produce Relevant Information, it is impossible to determine the extent to which Complaint Counsel have failed to produce relevant information absent a deposition to discover this information. Moreover, this chart is intended to illustrate the arbitrary nature of Complaint Counsel's preservation and production.

13.	3/16/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01712-13	Not Produced
14.	3/24/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United -01715-16	Not Produced
15.	3/24/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01717-18	Not Produced
16.	3/24/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United -01719-21	Not Produced
17.	3/24/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01722-24	Not Produced
18.	4/14/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01725-27	Not Produced
19.	4/15/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01783-85	FTC-ROPE-004230
20.	4/15/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01786-88	FTC-ROPE-004233
21.	4/15/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -01791-93	FTC-ROPE-004238
22.	4/15/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -02509-13	Included within FTC-ROPE-004246
23.	4/15/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -02536	Not Produced
24.	4/15/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United -02537	Not Produced
25.	4/15/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United -02538-41	FTC-ROPE-004340
26.	4/15/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United -02560-61	Not Produced

27.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United -02560-61	Not Produced
28.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United -02562-63	Not Produced
29.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United -02564-67	Not Produced
30.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United -02624-28	Not Produced
31.	4/15/11	Field, Kenneth	Williams, Teonta	Williams, Teonta	FTC_OSF-United-02647-51	Not Produced
32.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United-02652-56	FTC-ROPE-004369
33.	4/15/11	Field, Kenneth	Williams, Teonta	Williams, Teonta	FTC_OSF-United-02669-70	Not Produced
34.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United-02671-75	FTC-ROPE-004362
35.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United-02677-83	Not Produced
36.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United-02708-13	FTC-ROPE-00401
37.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United-02733-38	FTC-ROPE-004386
38.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United-02740-46	FTC-ROPE-004426
39.	4/15/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United-02748-54	FTC-ROPE-004393
40.	4/18/11	Williams, Teonta	Field, Kenneth	Field, Kenneth	FTC_OSF-United-02756-62	FTC-ROPE-004454

41.	4/18/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02775-82	FTC-ROPE-004434
42.	4/18/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02795-97	Not Produced
43.	4/19/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02798-800	Not Produced
44.	4/19/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02801-04	Not Produced
45.	4/19/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02805-09	Not Produced
46.	4/19/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02810-14	Not Produced
47.	4/19/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02815-20	Not Produced
48.	4/19/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02821-26	Not Produced
49.	4/19/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02828-34	Not Produced
50.	4/19/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02835-41	Not Produced
51.	4/20/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02842	Not Produced
52.	4/20/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02843	Not Produced
53.	5/19/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02867-68	Not Produced
54.	5/19/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02867-68	Not Produced
55.	5/24/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02878-79	Not Produced
56.	5/24/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02880-82	Not Produced
57.	5/24/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02883-85	Not Produced

58.	5/24/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02886-89	Not Produced
59.	5/24/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02890-93	Not Produced
60.	5/24/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02886-89	Not Produced
61.	5/24/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02890-93	Not Produced
62.	5/24/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02894-97	Not Produced
63.	6/3/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02898-99	Not Produced
64.	6/3/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02900-02	Not Produced
65.	6/3/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02906-09	Not Produced
66.	6/17/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02910-12	Not Produced
67.	6/20/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02913-15	Not Produced
68.	6/20/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02916-18	Not Produced
69.	7/15/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02921	Not Produced
70.	7/15/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02922	Not Produced
71.	7/18/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02923	Not Produced
72.	7/18/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02924	Not Produced
73.	7/19/11	Williams, Teonta	Nolan, Paul	FTC_OSF-United-02925	Not Produced
74.	7/19/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02926-38	Not Produced

75.	7/19/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02939	Not Produced
76.	7/20/11	Nolan, Paul	Williams, Teonta	FTC_OSF-United-02940-41	Not Produced
77.	7/20/11	Williams, Teonta	Field, Kenneth; Nolan, Paul	FTC_OSF-United-02942-43	Not Produced
78.	7/20/11	Nolan, Paul	Williams, Teonta	FTC_OSF-United-02944-45	Not Produced
79.	7/20/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02946-47	Not Produced
80.	7/20/11	Williams, Teonta	Field, Kenneth; Nolan, Paul	FTC_OSF-United-02948-50	Not Produced
81.	7/20/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02951	Not Produced
82.	7/20/11	Williams, Teonta	Field, Kenneth; Nolan, Paul	FTC_OSF-United-02952	Not Produced
83.	7/20/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02953-54	Not Produced
84.	7/21/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02955-56	Not Produced
85.	7/21/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02957-59	Not Produced
86.	7/21/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02963-65	Not Produced
87.	7/21/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02966	Not Produced
88.	8/30/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02967-77	Not Produced
89.	8/30/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02978	Not Produced
90.	8/30/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02979	Not Produced

91.	8/30/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02980	Not Produced
92.	8/30/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02981-82	Not Produced
93.	8/30/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02983-84	Not Produced
94.	8/30/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02985-87	Not Produced
95.	8/30/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02988-90	Not Produced
96.	9/8/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02991-94	Not Produced
97.	9/8/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-02995-98	Not Produced
98.	9/13/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-02999	Not Produced
99.	9/13/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03000	Not Produced
100.	9/13/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03001	Not Produced
101.	9/13/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03002-11	Not Produced
102.	9/13/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03012	Not Produced
103.	9/13/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03023	Not Produced
104.	9/15/11	Field, Kenneth	Mitchell, Jill	FTC_OSF-United-03032	Not Produced
105.	9/19/11	Mitchell, Jill	Field, Kenneth	FTC_OSF-United-03033-34	Not Produced
106.	9/19/11	Field, Kenneth	Mitchell, Jill	FTC_OSF-United-03033-34	Not Produced
107.	9/19/11	Mitchell, Jill	Field, Kenneth	FTC_OSF-United-03033-34	Not Produced

108.	9/21/11	Field, Kenneth	Mitchell, Jill	FTC_OSF-United-03037-39	Not Produced
109.	9/22/11	Mitchell, Jill	Field, Kenneth	FTC_OSF-United-03040-43	Not Produced
110.	9/22/11	Field, Kenneth	Mitchell, Jill	FTC_OSF-United-03052-55	Not Produced
111.	9/22/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03056-60	Not Produced
112.	9/22/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03061-65	Not Produced
113.	9/22/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03066-71	Not Produced
114.	9/23/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03072-77	Not Produced
115.	9/23/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03078-84	Not Produced
116.	9/23/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03085-91	Not Produced
117.	9/23/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03116-45	Not Produced
118.	9/23/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03176	Not Produced
119.	9/23/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03237	Not Produced
120.	9/23/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03238-39	Not Produced
121.	9/26/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03245-46	Not Produced
122.	9/26/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03247	Not Produced
123.	9/26/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03250-51	Not Produced
124.	9/26/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03252	Not Produced

125.	9/26/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03253	Not Produced
126.	9/29/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03254	Not Produced
127.	9/29/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03256-57	Not Produced
128.	9/29/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03260-61	Not Produced
129.	9/30/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03262	Not Produced
130.	9/30/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03316	Not Produced
131.	10/7/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03384	Not Produced
132.	10/7/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03285	Not Produced
133.	10/7/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03386-87	Not Produced
134.	10/7/11	Field, Kenneth	Williams, Teonta	FTC_OSF-United-03288-89	Not Produced
135.	10/12/11	Williams, Teonta	Field, Kenneth	FTC_OSF-United-03390-91	FTC-ROPE-000962
				Third Party Aetna	FTC
136.	2/16/11	Dennis, Anthony	Field, Kenneth; Hall, Suzanne	AE0050592	Not Produced
137.	2/23/2011	Dennis, Anthony	Hall, Suzanne	AE0050592	Not Produced
138.	2/23/2011	Field, Kenneth	Dennis, Anthony	AE0050593	Not Produced
139.	2/23/2011	Dennis, Anthony	Field, Kenneth	AE0050595	Not Produced

140.	2/23/2011	Field, Kenneth	Dennis, Anthony	AE0050596	Not Produced
141.	2/25/2011	Field, Kenneth	Dennis, Anthony	AE0050597	Not Produced
142.	3/16/2011	Ambrogi, Katherine	Dennis, Anthony	AE0050577	Not Produced
143.	3/22/2011	Dennis, Anthony	Ambrogi, Katherine	AE0050794	Not Produced
144.	3/28/2011	Ambrogi, Katherine	Sullivan-Ifkovic, Carol	AE0050600	FTC-ROPE-005317
145.	4/21/2011	Ambrogi, Katherine	Sullivan-Ifkovic, Carol	AE0050792	Not Produced
146.	4/22/2011	Sullivan-Ifkovic, Carol	Ambrogi, Katherine	AE0050791	Not Produced
147.	5/4/2011	Sullivan-Ifkovic, Carol	Ambrogi, Katherine	AE0050790	Not Produced
148.	5/5/2011	Sullivan-Ifkovic, Carol	Ambrogi, Katherine	AE0050787	Not Produced
149.	5/5/2011	Ambrogi, Katherine	Sullivan-Ifkovic, Carol	AE0050789	Not Produced
150.	5/11/2011	Sullivan-Ifkovic, Carol	Ambrogi, Katherine	AE0050786	Not Produced
151.	5/12/2011	Ambrogi, Katherine	Sullivan-Ifkovic, Carol	AE0050601	Not Produced
152.	5/12/2011	Ambrogi, Katherine	Sullivan-Ifkovic, Carol	AE0050603	Not Produced
153.	5/12/2011	Ambrogi, Katherine	Sullivan-Ifkovic, Carol	AE0050782	Not Produced
154.	5/12/2011	Ambrogi, Katherine	Sullivan-Ifkovic, Carol	AE0050784	Not Produced
155.	5/13/2011	Ambrogi, Katherine	Sullivan-Ifkovic, Carol	AE0050605	Included in FTC-ROPE-000819

156.	5/13/2011	Sullivan-Ifkovic, Carol	Ambrog, Katherine	AE0050778	FTC-ROPE-000819
157.	5/13/2011	Ambrog, Katherine	Sullivan-Ifkovic, Carol	AE0050780	Not Produced
158.	5/13/2011	Sullivan-Ifkovic, Carol	Ambrog, Katherine	AE0050781	Included in FTC-ROPE-00819
159.	7/28/2011	Ambrog, Katherine	Sullivan-Ifkovic, Carol	AE0050771	Not Produced
160.	8/26/2011	Sullivan-Ifkovic, Carol	Ambrog, Katherine	AE0050766	Not Produced
161.	8/26/2011	Ambrog, Katherine	Sullivan-Ifkovic, Carol	AE0050768	Not Produced
162.	8/26/2011	Sullivan-Ifkovic, Carol	Ambrog, Katherine	AE0050770	Not Produced
163.	9/2/2011	Sullivan-Ifkovic, Carol	Ambrog, Katherine	AE0050741	FTC-ROPE-000865
164.	9/6/2011	Sullivan-Ifkovic, Carol	Ambrog, Katherine	AE0050740	Not Produced
165.	9/9/2011	Sullivan-Ifkovic, Carol	Ambrog, Katherine	AE0050739	Not Produced
166.	9/13/2011	Sullivan-Ifkovic, Carol	Ambrog, Katherine	AE0050738	FTC-ROPE-000893
167.	9/14/2011	Ambrog, Katherine	Sullivan-Ifkovic, Carol	AE0050737	Not Produced
168.	9/15/2011	Ambrog, Katherine	Sullivan-Ifkovic, Carol	AE0050735	Not Produced
169.	9/15/2011	Sullivan-Ifkovic, Carol	Ambrog, Katherine	AE0050736	Not Produced
170.	9/21/2011	Ambrog, Katherine	Dennis, Anthony; Sullivan-Ifkovic, Carol	AE0050727	Not Produced
171.	9/22/2011	Dennis, Anthony	Ambrog, Katherine	AE0050629	Not Produced

	(Top email is from 2/6/12)					
172.	10/3/2011 (Top email is from 2/6/12)	Dennis, Anthony	Ambrogio, Katherine	AE0050620		FTC-ROPE-000900
173.	10/3/2011	Ambrogio, Katherine	Dennis, Anthony	AE0050724		Not Produced
174.	10/3/2011	Sullivan-Ifkovic, Carol	Ambrogio, Katherine	AE0050725		FTC-ROPE-000899
175.	10/3/2011	Ambrogio, Katherine	Sullivan-Ifkovic, Carol	AE0050726		Not Produced
176.	11/18/2011	Ambrogio, Katherine	Dennis, Anthony; Sullivan-Ifkovic, Carol	AE0050712		FTC-ROPE-000938
	Date	From	To	Third Party Cigna		FTC
177.	4/6/11	Morrison, Jeremy	Wade, Michael	Cigna_00004		Not Produced
178.	4/7/11	Morrison, Jeremy	Wade, Michael	Cigna_00005		Not Produced
179.	5/25/11	Wade, Michael	Morrison, Jeremy	Cigna_00006		Not Produced
180.	5/25/11	Morrison, Jeremy	Wade, Michael	Cigna_00008		Not Produced
181.	6/9/11	Wade, Michael	Morrison, Jeremy	Cigna_00010		Not Produced
182.	8/16/11	Morrison, Jeremy	Gebhardt, Robert	Cigna_00010		Not Produced
183.	8/17/11	Gebhardt, Robert	Morrison, Jeremy	Cigna_00013		Not Produced
184.	8/18/11	Morrison, Jeremy	Gebhardt, Robert	Cigna_00016		Not Produced
185.	9/26/11	Morrison, Jeremy	Wade, Michael	Cigna_00019		Not Produced

186.	9/26/11	Wade, Michael	Morrison, Jeremy	Cigna_00020	Not Produced
187.	9/26/11	Morrison, Jeremy	Wade, Michael	Cigna_00020	Not Produced
188.	9/28/11	Morrison, Jeremy	Wade, Michael	Cigna_00022	Not Produced
189.	10/4/11	Morrison, Jeremy	Wade, Michael	Cigna_00024	Not Produced
190.	10/4/11	Wade, Michael	Morrison, Jeremy	Cigna_00026	Not Produced
191.	10/4/11	Morrison, Jeremy	Wade, Michael	Cigna_00026	Not Produced
192.	10/6/11	Morrison, Jeremy	Wade, Michael	Cigna_00029-35	Not Produced
193.	10/13/11	Morrison, Jeremy	Wade, Michael	Cigna_00036	Not Produced
194.	10/17/11	Morrison, Jeremy	Wade, Michael	Cigna_00037-43	Not Produced
195.	10/18/11	Morrison, Jeremy	Wade, Michael	Cigna_00044	Not Produced
196.	10/26/11	Morrison, Jeremy	Wade, Michael	Cigna_00045	Not Produced
197.	10/26/11	Wade, Michael	Morrison, Jeremy	Cigna_00046	FTC-ROPE-000705
198.	10/26/11	Morrison, Jeremy	Wade, Michael	Cigna_00047	FTC-ROPE-000705
	Date	From	To	Third Party BlueCross BlueShield	FTC
199.	02/14/11	Saunders, Anthony	Gonzalez, Victor	BCBSIL00002915FTC-RKM	Not Produced
200.	02/14/11	Saunders, Anthony	Gonzalez, Victor	BCBSIL00002969FTC-RKM	Not Produced
201.	02/19/11	Gonzalez, Victor	Saunders, Anthony	BCBSIL00002916FTC-RKM	Not Produced

202.	02/20/11	Saunders, Anthony	Gonzalez, Victor	BCBSIL00002970FTC-RKM	Not Produced
203.	02/20/11	Gonzalez, Victor	Saunders, Anthony	BCBSIL00002920FTC-RKM	Not Produced
204.	02/20/11	Saunders, Anthony	Gonzalez, Victor	BCBSIL00002973FTC-RKM	Not Produced
205.	02/20/11	Gonzalez, Victor	Saunders, Anthony	BCBSIL00002923FTC-RKM	Not Produced
206.	02/20/11	Saunders, Anthony	Gonzalez, Victor	BCBSIL00002976FTC-RKM	Not Produced
207.	02/20/11	Gonzalez, Victor	Saunders, Anthony	BCBSIL00002927FTC-RKM	Not Produced
208.	02/20/11	Saunders, Anthony	Gonzalez, Victor	BCBSIL00002980FTC-RKM	Not Produced
209.	02/20/11	Gonzalez, Victor	Saunders, Anthony	BCBSIL00002931FTC-RKM	Not Produced
210.	02/23/11	Saunders, Anthony	Gonzalez, Victor	BCBSIL00002985FTC-RKM	Not Produced
211.	02/24/11	Gonzalez, Victor	Saunders, Anthony	BCBSIL00002934FTC-RKM	Not Produced
212.	02/24/11	Saunders, Anthony	Gonzalez, Victor	BCBSIL00002989FTC-RKM	Not Produced
213.	03/04/11	Gonzalez, Victor	Widnell, Nicholas	BCBSIL00002940FTC-RKM	Not Produced
214.	03/07/11	Widnell, Nicholas	Gonzalez, Victor	BCBSIL00002868FTC-RKM	Not Produced
215.	03/10/11	Gonzalez, Victor	Widnell, Nicholas	BCBSIL00002942FTC-RKM	Not Produced
216.	03/14/11	Gonzalez, Victor	Widnell, Nicholas	BCBSIL00002945FTC-RKM	Not Produced
217.	03/15/11	Widnell, Nicholas	Gonzalez, Victor	BCBSIL00002871FTC-RKM	Not Produced
218.	03/15/11	Widnell, Nicholas	Gonzalez, Victor	BCBSIL00002874FTC-RKM	Not Produced

219.	03/15/11	Gonzalez, Victor	Kushner, Andrew	BCBSIL00002948FTC-RKM	Not Produced
220.	03/15/11	Kushner, Andrew	Gonzalez, Victor	BCBSIL00002998FTC-RKM	Not Produced
221.	03/15/11	Gonzalez, Victor	Kushner, Andrew	BCBSIL00002949FTC-RKM	Not Produced
222.	03/16/11	Gonzalez, Victor	Widnell, Nicholas	BCBSIL00002957FTC-RKM	Not Produced
223.	03/16/11	Widnell, Nicholas	Gonzalez, Victor	BCBSIL00002879FTC-RKM	Not Produced
224.	03/16/11	Gonzalez, Victor	Widnell, Nicholas	BCBSIL00002951FTC-RKM	Not Produced
225.	03/17/11	Widnell, Nicholas	Gonzalez, Victor	BCBSIL00002898FTC-RKM	Not Produced
226.	03/18/11	Ambrogio, Katherine	Gonzalez, Victor	BCBSIL00003912FTC-RKM	Not Produced
227.	03/18/11	Gonzalez, Victor	Ambrogio, Katherine	BCBSIL00002960FTC-RKM	Not Produced
228.	03/18/11	Ambrogio, Katherine	Gonzalez, Victor	BCBSIL00003913FTC-RKM	Not Produced
229.	03/18/11	Gonzalez, Victor	Ambrogio, Katherine	BCBSIL00002958FTC-RKM	Not Produced
230.	03/24/11	Ambrogio, Katherine	Quirk, Karen	BCBSIL00003925FTC-RKM	Partially included in FTC-ROPE-000791
231.	03/25/11	Ambrogio, Katherine	Quirk, Karen	BCBSIL00003960FTC-RKM	Partially included in FTC-ROPE-000796
232.	04/08/11	Ambrogio, Katherine	Tucker, Brad	BCBSIL00003976FTC-RKM	Not Produced
233.	04/11/11	Ambrogio, Katherine	Tucker, Brad	BCBSIL00003977FTC-RKM	Partially included in FTC-ROPE-

							000076
234.	04/19/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00003982FTC-RKM	Partially included in FTC-ROPE-000076		
235.	04/19/11	Tucker, Brad	Ambrogi, Katherine	BCBSIL00003289FTC-RKM	Not Produced		
236.	04/20/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00003986FTC-RKM	Partially included in FTC-ROPE-000076		
237.	04/20/11	Tucker, Brad	Ambrogi, Katherine	BCBSIL00003291FTC-RKM	Partially included in FTC-ROPE-000076		
238.	04/20/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00003990FTC-RKM	Partially included in FTC-ROPE-000076		
239.	04/22/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00003995FTC-RKM	Not Produced		
240.	04/25/11	Tucker, Brad	Ambrogi, Katherine	BCBSIL00003297FTC-RKM - BCBSIL00003384FTC-RKM	Not Produced		
241.	04/26/11	Tucker, Brad	Ambrogi, Katherine	BCBSIL00003561FTC-RKM	Not Produced		
242.	04/26/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00003998FTC-RKM	Partially included in FTC-ROPE-000076		
243.	04/26/11	Tucker, Brad	Ambrogi, Katherine	BCBSIL00003650FTC-RKM	Partially included in FTC-ROPE-		

244.	04/26/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00004004FTC-RKM	000076	Partially included in FTC-ROPE-000076
245.	05/12/11	Tucker, Brad	Ambrogi, Katherine	BCBSIL00003654FTC-RKM	000076	Partially included in FTC-ROPE-000076
246.	05/12/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00004019FTC-RKM	000076	Partially included in FTC-ROPE-000076
247.	05/19/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00004037FTC-RKM	000836	Partially included in FTC-ROPE-000836
248.	05/19/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00004046FTC-RKM	000836	Partially included in FTC-ROPE-000836
249.	06/16/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003128FTC-RKM		Not Produced
250.	06/16/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003072FTC-RKM		Not Produced
251.	07/06/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003129FTC-RKM		Not Produced
252.	07/20/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003133FTC-RKM		Not Produced
253.	07/21/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003074FTC-RKM		Not Produced
254.	07/21/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003134FTC-RKM		Not Produced
255.	07/21/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003076FTC-RKM		Not Produced
256.	07/21/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003136FTC-RKM		Not Produced

257.	07/22/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003139FTC-RKM	Not Produced
258.	07/26/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003078FTC-RKM	Not Produced
259.	07/27/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003141FTC-RKM	Not Produced
260.	07/27/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003080FTC-RKM	Not Produced
261.	07/28/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003144FTC-RKM	Not Produced
262.	07/29/11	Tucker, Brad	Ambrogio, Katherine	BCBSIL00003681FTC-RKM- BCBSIL00003683FTC-RKM	Not Produced
263.	07/29/11	Ambrogio, Katherine	Tucker, Brad	BCBSIL00004057FTC-RKM	Not Produced
264.	07/29/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003145FTC-RKM	Not Produced
265.	08/01/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003084FTC-RKM	Not Produced
266.	08/01/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003146FTC-RKM	Not Produced
267.	08/01/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003086FTC-RKM	Not Produced
268.	08/02/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003149FTC-RKM	Not Produced
269.	08/03/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003089FTC-RKM	Not Produced
270.	08/03/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003157FTC-RKM	Not Produced
271.	08/03/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003153FTC-RKM	Not Produced
272.	08/03/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003093FTC-RKM	Not Produced
273.	08/04/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003096FTC-RKM	Not Produced

274.	08/04/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003166FTC-RKM	Not Produced
275.	08/04/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003161FTC-RKM	Not Produced
276.	08/04/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00004062FTC-RKM	Partially included in FTC-ROPE- 000860
277.	08/05/11	Quirk, Karen	Cunningham, Richard	BCBSIL00003100FTC-RKM	Not Produced
278.	08/05/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003171FTC-RKM	Not Produced
279.	08/05/11	Cunningham, Richard	Jones, David	BCBSIL00003194FTC-RKM	Not Produced
280.	08/05/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003176FTC-RKM	Not Produced
281.	08/05/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003190FTC-RKM	Not Produced
282.	08/09/11	Gonzalez, Victor	Cunningham, Richard	BCBSIL00002963FTC-RKM	Not Produced
283.	08/10/11	Cunningham, Richard	Gonzalez, Victor	BCBSIL00003200FTC-RKM	Not Produced
284.	08/10/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00004065FTC-RKM	Not Produced
285.	08/11/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00004066FTC-RKM	Not Produced
286.	08/11/11	Tucker, Brad	Ambrogi, Katherine	BCBSIL00003689FTC-RKM- BCBSIL00004057FTC-RKM	Not Produced
287.	08/12/11	Tucker, Brad	Ambrogi, Katherine	BCBSIL00003705FTC-RKM	Not Produced
288.	08/12/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00004067FTC-RKM	Not Produced
289.	08/15/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003201FTC-RKM	Not Produced

290.	08/24/11	Ambrogio, Katherine	Tucker, Brad	BCBSIL00004070FTC-RKM	Partially included in FTC-ROPE-000862 Not Produced
291.	08/25/11	Ambrogio, Katherine	Tucker, Brad	BCBSIL00004072FTC-RKM	Not Produced
292.	08/25/11	Tucker, Brad	Brand, Keith	BCBSIL00003707FTC-RKM- BCBSIL00003858FTC-RKM	Not Produced
293.	09/02/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003208FTC-RKM	Not Produced
294.	09/07/11	Quirk, Karen	Pratt, Robert	BCBSIL00004083FTC-RKM	Partially included in FTC-ROPE-001840
295.	09/07/11	Pratt, Robert	Quirk, Karen	BCBSIL00004094FTC-RKM	Partially included in FTC-ROPE-001840
296.	09/07/11	Quirk, Karen	Pratt, Robert	BCBSIL00004085FTC-RKM	Partially included in FTC-ROPE-001840
297.	09/07/11	Quirk, Karen	Pratt, Robert	BCBSIL00004088FTC-RKM	Partially included in FTC-ROPE-001840
298.	09/07/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003209FTC-RKM	Partially included in FTC-ROPE-001840
299.	09/09/11	Cunningham, Richard	Quirk, Karen	BCBSIL00003212FTC-RKM	Partially included in FTC-ROPE-001840
300.	09/22/11	Ambrogio, Katherine	Tucker, Brad	BCBSIL00003909FTC-RKM	Not Produced
301.	09/23/11	Ambrogio, Katherine	Tucker, Brad	BCBSIL00004074FTC-RKM	Not Produced
302.	09/23/11	Ambrogio, Katherine	Tucker, Brad	BCBSIL00004075FTC-RKM	Not Produced

303.	09/26/11	Ambrogi, Katherine	Tucker, Brad	BCBSIL00004077FTC-RKM	Not Produced
304.	10/03/11	Pratt, Robert	Quirk, Karen	BCBSIL00004097FTC-RKM	Partially included in FTC-ROPE-001840
305.	10/17/11	Tucker, Brad	Cunningham, Richard	BCBSIL00003911FTC-RKM	Not Produced
306.	10/17/11	Cunningham, Richard	Tucker, Brad	BCBSIL00003219FTC-RKM	Not Produced
307.	10/19/11	Cunningham, Richard	Tucker, Brad	BCBSIL00003221FTC-RKM	Not Produced
308.	10/19/11	Cunningham, Richard	Tucker, Brad	BCBSIL00003224FTC-RKM	Not Produced
309.	07/22/11	Cunningham, Richard	Quirk, Karen	BCBSIL00006838FTC-RKM - BCBSIL00006841FTC-RKM	Not Produced
		From	To	Third Party Bates Nos. Coventry	FTC Bates Nos.
310.	07/05/11	Ambrogi, Katherine	Lerner, Art	CVTYCM00000060- CVTYCM00000061	Not Produced
311.	07/13/11	Ambrogi, Katherine	Lerner, Art	CVTYCM00000065	Partially included in FTC-ROPE-000855

EXHIBIT M

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EXHIBIT T

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Frederick J. Kapala	Sitting Judge if Other than Assigned Judge	P. Michael Mahoney
CASE NUMBER	11 C 50344	DATE	12/1/2011
CASE TITLE	Federal Trade Commission vs. OSF Healthcare System, and Rockford Health System		

DOCKET ENTRY TEXT:

The parties' agreed motion for entry of a preliminary injunction hearing schedule [59] is granted. Discovery hearing set for January 3, 2012 at 1:30 PM.



[For further details see text below.]

Notices mailed by Judicial staff.

STATEMENT

1. Beginning on November 29, 2011, and ending no later than December 5, 2011, the Plaintiff shall produce, for inspection and copying, all investigational hearing transcripts of, and documents and materials provided by, third parties during the investigation of Defendants' affiliation unless the third party has moved to prevent such disclosure by December 5, 2011.
2. On December 5, 2011, the Plaintiff and Defendants shall disclose the identity of any additional expert witness(es) and describe the topic(s) of his or her testimony.
3. On December 19, 2011, Defendants shall produce any additional affidavits or declarations from fact witnesses employed by or otherwise affiliated with the Defendants.
4. On December 20, 2011, the Plaintiff and Defendants shall identify up to 5 potential fact witnesses per side and each previously disclosed expert witness who may be called to testify at the evidentiary hearing on Plaintiff's Motion for Preliminary Injunction.
5. On January 11, 2012, the Plaintiff and Defendants shall exchange any additional, supplemental, or rebuttal affidavits or declarations from their previously disclosed expert witnesses.
6. Within 48 hours of receipt, and in all cases by January 13, 2012, the Plaintiff and Defendants shall exchange any additional affidavits or declarations from third-party fact witnesses.
7. On January 18, 2012, the Plaintiff and Defendants shall: (a) exchange the investigational hearing testimony excerpts they intend to offer as evidence from those fact witnesses whose investigational hearings the FTC conducted during the course of its investigation; and (b) identify each documentary exhibit they intend to

8. Prior to the preliminary injunction hearing, the Plaintiff and the Defendants collectively shall each be entitled to depose the other's expert witnesses and up to eight fact witnesses, including third parties. Depositions of expert witnesses shall be limited to seven hours. Depositions of third-party fact witnesses shall be limited to six hours. The party noticing a third-party fact witness deposition shall be entitled to four hours of deposition time and the other party shall be entitled to two hours of deposition time. Plaintiff shall be entitled to five hours of deposition time when deposing any of Defendant's employees who testified in an investigational hearing. Plaintiff shall be entitled to six hours of deposition time when deposing any other witness employed by or otherwise affiliated with Defendants.
9. On January 20, 2012, the Plaintiff and Defendants shall identify the four witnesses from the preliminary lists created pursuant to Paragraph 4 that each side will present at the evidentiary hearing on Plaintiff's Motion for Preliminary Injunction.
10. On January 24, 2012, the parties shall exchange: (a) the excerpts they intend to offer as evidence from the transcripts of the depositions of the expert and fact witnesses whose depositions were taken pursuant to Paragraph 8 of this Order; and (b) any counter-designations to the investigational hearing testimony excerpts that the other party identified pursuant to Paragraph 7(a).
11. On January 27, 2012, the parties shall exchange any counter-designations to the deposition excerpts that the other party identified pursuant to Paragraph 10(a).
12. Consistent with the Court's November 23, 2011 order:
- a. a three-day evidentiary hearing on Plaintiff's Motion for Preliminary Injunction shall commence at 9 a.m. on February 1, 2012, with a maximum of four witnesses for Plaintiff and four witnesses for Defendants collectively;
 - b. in lieu of opening statements, the parties shall file supplemental pre-hearing memoranda, not to exceed 15 pages in length, on January 27, 2012.
 - c. in lieu of closing arguments, the parties shall file post-hearing briefs, not to exceed 20 pages, and proposed factual findings and conclusions of law on February 14, 2012; and;
 - d. the parties may file responses to the post-trial briefs, not to exceed 15 pages in length, on February 21, 2012.

Courtroom Deputy

LW

EXHIBIT U



Bureau of Competition
Mergers IV Division

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

Telephone: 202.326.3149
Email: jmorris@ftc.gov

December 5, 2011

VIA FEDEX

Nicole L. Castle, Esq.
McDermott Will & Emery LLP
600 13th Street, N.W.
Washington, DC 20005

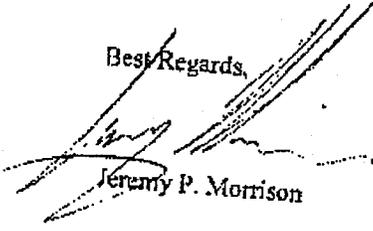
RE: FTC v. OSF Healthcare System and Rockford Health System,
1:11-cv-50344

Dear Nicole:

Please find enclosed three DVDs completing the Commission's obligations pursuant to Paragraph 1 of the court's December 1, 2011, order. Please note that the information from Blue Cross/Blue Shield, contained on the disks labeled "Production 1," is encrypted. I will email you the password for accessing that data. Under the stipulated interim protective order, all materials should be considered confidential and treated as such.

Please call me at (202) 326-3149 or Stephanie Reynolds at (202) 326-2177 if you have any questions.

Best Regards,


Jeremy P. Morrison

cc: Stephanie Reynolds, Esq.

EXHIBIT V

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EXHIBIT W

of the Federal Trade Commissions' Rules of Practice for Adjudicative Proceedings, 16 C.F.R. §§ 3.31 – 3.39, and all non-identical copies of those materials and electronically stored information, and identical copies of those materials and electronically stored information that were sent from, delivered to, or maintained by, different person(s).

4. "DOJ" means the U.S. Department of Justice, any division or section included within it, and any employees, agents or attorneys acting on its behalf.

5. "Relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, stating, evaluating, recommending, setting forth or supporting.

6. "Relevant Transaction" means the transaction pursuant to which Rockford Memorial Hospital, Visiting Nurses Association, Rockford Health Physicians, and associated RHS entities will be integrated into OSF Healthcare System.

7. "You" or "yours" refers to the Federal Trade Commission and any employees, agents or attorneys acting on its behalf.

8. The use of the singular shall be deemed to include the plural and vice versa. The terms "and" and "or" shall have both conjunctive and disjunctive meanings. The terms "each," "any," and "all" mean "each and every." The past tense form shall be construed to include the present tense, and vice versa, whenever such a dual construction will serve to bring within the scope of any of these requests any documents or information that would otherwise not be within their scope.

INSTRUCTIONS

1. The document requests are intended to cover all documents in your possession, custody or control, regardless of where they are located or who may actually have physical possession of them.
2. Documents and things shall be produced as they are kept in the ordinary course of business. Documents produced, regardless of format or form and regardless of whether submitted in hard copy or electronic format, shall be produced in complete form, un-redacted unless privileged, and, in the order in which they appear in your files, or, if received from third parties, in the order in which they appeared when you received them. Documents shall not be shuffled or rearranged. All documents shall identify the files from which they are being produced, be produced in color where necessary to interpret the document, and marked on each page with corporate identification and consecutive document control numbers.
3. Documents shall be accompanied by an affidavit of an individual competent to testify that any copies are true, correct and complete copies of the original documents.
4. Documents 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 Respondents' representatives determine prior to submission that the machine-readable form is in a format that allows Respondents to use the computer files).

5. These requests shall be deemed to be continuing and to require supplementation pursuant to the Federal Trade Commission's Rules of Practice for Adjudicative Proceedings, 16 C.F.R. § 3.31(e).

6. Documents stored in electronic or hard copy format shall be submitted in the following electronic formats provided that such copies are true, correct, and complete copies of the original documents:

(a) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata;

(b) Submit all other documents in image format with extracted text and metadata; and

(c) Submit all hard copy documents in image format accompanied by OCR.

7. For each document submitted in electronic format include the following metadata fields and information:

(a) For loose 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 file path 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

(d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.

8. Submit electronic files and images as follows:

(a) For productions over 10 gigabytes, use IDE or EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosures;

(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.

9. If you withhold from production any document responsive to these requests based on a claim of privilege, identify: (1) the type of document (letter, memo, e-mail, etc.); (2) the document's authors or creators; (3) the document's addresses and recipients; (4) the document's general subject matter; (5) all persons to whom the document or any portion of it has already been revealed; (6) the source of the document; (7) the date of the document; and (8) the basis for withholding the document.

10. If you have reason to believe that documents responsive to a particular request once existed but no longer exist for reasons other than the ordinary course of business or the implementation of your document retention policy, state the circumstances under which they

were lost or destroyed, describe the documents to the fullest extent possible, state the request(s) to which they are responsive, and identify persons having knowledge of the content of such documents.

11. Unless otherwise indicated, you are not required to produce documents that you already provided in response to the discovery requests issued in the related case before the Northern District of Illinois, *Federal Trade Commission v. OSF Healthcare System and Rockford Health System*, Case No. 3:11-cv-50344.

12. Documents should be returned consistent with the instructions above by 5:00 pm Eastern Standard Time on the twenty-first day following the date of this request to Carla A. R. Hine, counsel for Respondent Rockford Health System, McDermott Will & Emery, LLP, 600 13th Street, NW, Washington, DC 20005.

DOCUMENT REQUESTS

1. All documents received during your investigation of the Relevant Transaction that you have not previously produced to Respondents' counsel.

2. All documents relating to your communications with third parties as part of your investigation of the Relevant Transaction, including correspondence, interview notes, negotiations regarding the production of documents in response to any Civil Investigative Demand or Subpoena *Duces Tecum*, or factual proffers or declarations, including drafts, proffers or declarations not filed or submitted to the Respondent, or proffers or declarations expressing support for the Relevant Transaction.

3. All documents that you provided to your testifying or consulting experts that you have not previously produced to counsel for Respondent, including data, notes, studies or analyses.

4. All documents received from the DOJ relating to the DOJ's investigation of the proposed acquisition of SwedishAmerican Health System Corporation by OSF Healthcare System.
5. All documents relating to your communications with the State of Illinois Attorney General's office and with the Illinois Health Facilities and Services Review Board relating to the Relevant Transaction.
6. All documents identified in your responses to Respondents' First Set of Interrogatories to Complaint Counsel.

Dated: December 21, 2011

Respectfully submitted,



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*Attorneys for Respondent OSF Healthcare
System*

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2011, a true and correct copy of Respondents' First Request for Documents to Complaint Counsel was served on the following counsel via electronic mail:

Matthew J. Reilly
Jeffrey H. Perry
Kenneth W. Field
Jeremy P. Morrison
Richard A. Feinstein
Norman A. Armstrong, Jr.
Willard K. Tom

Federal Trade Commission
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narmstrong@ftc.gov
wtom@ftc.gov

Attorneys for Plaintiff Federal Trade Commission

Dated: December 21, 2011



Shauna A. Barnes
*Counsel for Defendant
Rockford Health System*

EXHIBIT AA

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



In the Matter of
OSF Healthcare System,
a corporation, and
Rockford Health System,
a corporation,
Respondents.

DOCKET NO. 9349

**ORDER ON RESPONDENTS' MOTION TO COMPEL DOCUMENTS
REQUESTED FROM UNITEDHEALTH GROUP AND
TO ENFORCE SUBPOENA *AD TESTIFICANDUM***

I.

Respondents OSF Healthcare System and Rockford Health Systems ("Respondents") filed a Motion to Compel UnitedHealth Group to Produce Documents Requested by Subpoena *Duces Tecum* and to Enforce Subpoena *Ad Testificandum* ("Motion") on February 6, 2012. Third party UnitedHealth Group, Inc. ("United") submitted an Opposition on February 13, 2012. For the reasons set forth below, Respondents' Motion to Compel is DENIED IN PART and GRANTED IN PART.

II.

Respondents state that they served a subpoena on United requesting certain documents for the period from January 1, 2007 to present, to be produced for inspection on January 10, 2012. Respondents assert that the following five Subpoena requests are at issue: (1) Subpoena Request No. 7, which seeks member surveys, studies, or analyses; (2) Subpoena Request No. 12, which seeks communications between physician network personnel and sales personnel regarding health plan management; (3) Subpoena Request No. 15, which seeks documents relating to competition between health plans; (4) Subpoena Request No. 18, which seeks documents relating to United's negotiations with providers of general acute care inpatient hospital services in the Rockford area; and (5) Subpoena Request No. 19, which seeks documents relating to pricing models that compare rates for hospitals services.

In addition, Respondents state that they served a subpoena *ad testificandum* for the deposition of United's Vice Regional President for Network Management, Ms.

Michelle Lobe, on January 23, 2012. Respondents further recite the negotiations it engaged in with United and attached a Certificate of Conference, as required by Commission Rule 3.22(g).

United argues that the requests are overly broad and that United has already expended significant time and resources locating, gathering, and producing responsive documents. United further argues that Ms. Lobe has already been deposed twice and provided live testimony during a preliminary injunction hearing and thus should not be compelled to provide additional deposition testimony.

III.

With respect to Request Numbers 7 and 15, United asserts that United has conducted a reasonable search and has not located any documents responsive to these requests. Respondents' Motion does not provide a basis for not accepting United's representation with respect to Request Numbers 7 and 15. Therefore, Respondents' Motion is DENIED as to Request Numbers 7 and 15.

With respect to Request Number 12, United asserts that the request is overly broad and that Respondents have not advanced a specific argument showing why the requested documents are relevant. United states, as an example, that the request for communications relating to "proposed or desired changes to the provider network" will likely encompass communications that have nothing to do with the issues raised in this action and that communications relating to member or employer feedback would more than likely require United to search for customer complaints about issues relating to the timeliness of processing health claims.

In agency actions, "[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency's legitimate inquiry and the public interest." *In re Polypore*, 2009 FTC LEXIS 41, at *10 (Jan. 15, 2009); *Federal Trade Commission v. Dresser Indus.*, 1977 U.S. Dist. LEXIS 16178, at *13 (D.D.C. 1977). "The burden of showing that the request is unreasonable is on the subpoenaed party." *In re Polypore*, 2009 FTC LEXIS 41, at *10 (Jan. 15, 2009); *FTC v. Dresser Indus.*, 1977 U.S. Dist. LEXIS 16178, at *13 (D.D.C. 1977). "Further, that burden is not easily met where, as here, the agency inquiry is pursuant to a lawful purpose and the requested documents are relevant to that purpose." *Id.* (enforcing subpoena served on non-party by the respondent). See *In re Kaiser Alum. & Chem. Corp.*, 1976 FTC LEXIS 68, at *19-20 (Nov. 12, 1976) ("Even where a subpoenaed third party adequately demonstrates that compliance with a subpoena will impose a substantial degree of burden, inconvenience, and cost, that will not excuse producing information that appears generally relevant to the issues in the proceeding.").

However, subpoena requests that seek documents "concerning" or "relating to" have been found to lack the reasonable particularity required by Commission Rule 3.34(b) (a subpoena *duces tecum* "shall specify with reasonable particularity the material to be produced"). E.g., *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 19,

*12 (Feb. 4, 2004) (limiting request seeking “[a]ll internal and external correspondence, memoranda, and messages concerning or relating to” the respondent). Consumer complaints about the timeliness of processing health claims are not relevant to the issues in this case.

Accordingly, Respondents’ motion to compel documents responsive to Request Number 12 is **GRANTED IN PART**. Request Number 12 is hereby narrowed as follows:

12. Documents describing or reflecting any communications between individuals responsible for managing your hospital and physician networks and individuals in your sales group regarding your health plan networks in the Relevant Area, including but not limited to discussions of employer feedback, marketability or quality of the network, proposed or desired changes to the provider network, and product pricing, but excluding communications, not otherwise responsive to this Subpoena, that describe or reflect consumer complaints about the timeliness of processing health claims.

With respect to Request Number 18, United asserts that the request is overly broad and imposes a substantial burden. In addition, United asserts that to comply with Request Number 18, as written, would require United to search and produce documents that Respondents already have in their possession. United further asserts that it has already produced its contracts with Respondents and that Respondents have failed to show why United should be required to search for and produce communications relating to its contract negotiations with hospitals in the Rockford area.

Discovery shall be limited if Administrative Law Judge determines that the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive. 16 C.F.R. § 3.31(c)(2)(i). To the extent that Request Number 18 seeks documents that Respondents already possess, the Motion is **DENIED**. However, documents consisting of United’s communications in its contract negotiations with hospitals in the Rockford area are relevant and a request for such documents is not overly broad.

Accordingly, Respondents’ motion to compel documents responsive to Request Number 18 is **GRANTED IN PART**. Request Number 18 is hereby narrowed as follows:

18. Documents describing or reflecting your negotiations with providers of the Relevant Services in the Relevant Area from January 1, 2005 to the present, including but not limited to contract proposals, drafts, and communications between you and providers of Relevant Services in the Relevant Area; documents identifying key or “must-have” hospitals, outpatient facilities, or primary care physicians in the Relevant Area; documents analyzing the geographic coverage of providers; documents, information, and data relied upon during contract negotiations (such as quality measures, member utilization patterns, and employer or member feedback regarding your provider network or product offerings); documents relied upon to determine whether proposed reimbursement rates are

comparable to those you pay to other providers of Relevant Services in the Relevant Area; documents reflecting whether to include or exclude any hospital or hospital system, or physician or physician organization in your provider network, communications regarding any provider's desire to exclude any other providers from a health plan; and copies of the final provider contracts, including any amendments or modifications, for Relevant Services in the Relevant Area.

With respect to Request Number 19, United asserts that the request seeks documents beyond the Relevant Area and is not limited to a specific time period. United further asserts that because it has produced its contracts and Respondents know the terms of its contracts with other insurance companies and payors, Respondents have the information they seek in this request.

Absent a showing of the relevance of information pertaining to the geographic area alleged in the Complaint or asserted in the Answer, a document request served on a third party will be limited to the relevant geographic area. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 19, *13 (Feb. 4, 2004). Unless a more limited time has already been agreed to by Respondents, the specific time period shall be limited to the period requested in Subpoena Instruction Number 6, January 1, 2007 to present.

Documents generated by United in their ordinary course of business in which United compares the rates that United is charged by Respondents to the rates United is charged by SwedishAmerica are highly relevant to this proceeding and may be more dispositive than a document generated by Respondents' counsel or experts creating such comparisons from the documents received in litigation.

Accordingly, Respondents' motion to compel documents responsive to Request Number 19 is GRANTED IN PART. Request Number 19 is hereby narrowed as follows:

19. Documents describing or reflecting pricing models that compare the rates of the Relevant Hospitals for Relevant Services and outpatient services to any hospital or provider in the Relevant Area, including documents that you use to determine how actual or proposed contracts with the Relevant Hospitals compare to each other and how those contracts compare to contracts they have with other insurance carriers.

IV.

Respondents also seek to enforce the subpoena *ad testificandum* for the deposition of United's Vice Regional President for Network Management, Ms. Michelle Lobe. Respondents state that Ms. Lobe testified on January 10, 2012 in response to a subpoena to testify in the Northern District of Illinois proceeding, *Federal Trade Commission v. OSF Healthcare System and Rockford Health System* (Case No 11-cv-50344) ("related federal proceeding") ("January 10, 2012 deposition"). Respondents further state that since Ms. Lobe's testimony, United has produced additional documents responsive to Respondents' subpoena requests on January 19, 2012, January 20, 2012, and February 3,

2012. Respondents then assert that they intend to depose Ms. Lobe on documents produced after the January 10, 2012 testimony.

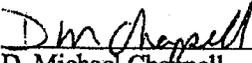
United asserts that Ms. Lobe has already provided testimony on the following three instances: (1) on September 27, 2011, in an investigational hearing conducted by Complaint Counsel in connection with the FTC's investigation into the proposed merger; (2) at the January 10, 2012 deposition; and (3) on February 1, 2012, by providing testimony at the preliminary injunction. United asserts that Respondents made the choice to depose Ms. Lobe on January 10, 2012, and should not be entitled to another deposition.

Although Respondents deposed Ms. Lobe on January 10, 2012 in the related federal proceeding, in advance of her testimony at the preliminary injunction in that matter, Respondents have since received additional documents in this proceeding on which they wish to question Ms. Lobe. Thus, Respondents have provided a sufficient reason to take a deposition of Ms. Lobe in this matter. However, such deposition is allowed only on the limited basis of questioning Ms. Lobe about documents produced after January 10, 2012. Accordingly, in this respect, Respondents' Motion is GRANTED.

V.

The close of discovery in this case is February 17, 2012. That deadline is hereby extended to February 23, 2012 for the limited purpose of allowing United to produce documents and to February 27, 2012 for the limited purpose of allowing United to take the deposition of Ms. Lobe as required by this order.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: February 14, 2012

EXHIBIT BB

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EXHIBIT CC

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