



UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

In the Matter of)	
)	
OSF Healthcare System)	Docket No. 9349
a corporation, and)	
)	PUBLIC VERSION
Rockford Health System,)	
a corporation.)	Chief Administrative Law
)	Judge D. Michael Chappell
)	

MOTION AND MEMORANDUM IN SUPPORT OF THE MOTION OF NON-PARTY
SWEDISHAMERICAN HEALTH SYSTEM
FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE

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I. INTRODUCTION

Non-Party SwedishAmerican Health System (“SwedishAmerican”) respectfully requests that this Court grant *in camera* treatment of certain documents that Complaint Counsel and Respondents’ counsel have designated for possible introduction as evidence in the administrative hearing in this matter. On March 13, 2012, pursuant to Rule 3.45(b) of the Commission’s Rules of Practice, Complaint Counsel and Respondents’ counsel both notified SwedishAmerican that they intended to introduce certain documents and deposition transcripts into evidence in the administrative trial. (Attachments A and B). For the reasons set forth below, SwedishAmerican seeks *in camera* treatment of following documents:¹

SAH-00005729-SAH-00005752;	SAH-00005753-SAH-00005763;
SAH-00005770-SAH-00005791;	SAH-00005792-SAH-00005818;
SAH-00005819-SAH-00005846;	SAH-00005847-SAH-00005872;
SAH-00005873-SAH-00005874;	SAH-00005875-SAH-00005875;
SAH-00005876-SAH-00005876;	SAH-00005877-SAH-00005877;
SAH-00005878-SAH-00005878;	SAH-00006544-SAH-00006547;
SAH-00006924-SAH-00006973;	SAH-00006548-SAH-00006697;
SAH-00006734-SAH-00006735;	SAH-00006768-SAH-00006768;
SAH-00006859-SAH-00006916;	SAH-00006981-SAH-00006981;
SAH-00006982-SAH-00006992;	SAH-00006994-SAH-00007000;
SAH-00007005-SAH-00007005;	SAH-00007006-SAH-00007006;
SAH-00007011-SAH-00007014;	SAH-00007015-SAH-00007021;
SAH-00007024-SAH-00007027;	SAH-00007024-SAH-00007027;
SAH-00007074-SAH-00007091;	SAH-00007092-SAH-00007094;
SAH-00007118-SAH-00007128;	SAH-00007129-SAH-00007139;
SAH-00007140-SAH-00007150;	SAH-00007151-SAH-00007161;
SAH-00007162-SAH-00007172;	SAH-00007173-SAH-00007183;
SAH-00007184-SAH-00007194;	SAH-00007195-SAH-00007205;
DX1077; DX 0242; DX 0380; DX 0337; DX 0346; PX 1266.	

For the reasons set forth below, SwedishAmerican seeks *in camera* treatment of following portions of William Gorski’s Declaration:

¹ Although Respondents’ counsel indicated they would only use limited portions of the deposition transcripts, Complaint Counsel indicated they would submit the entire depositions into evidence. Therefore, this motion designates those portions of the depositions for which we are requesting *in camera* treatment.

Gorski decl. ¶¶5; 6; 9; 17; 19; 22; 26; 27; 28; 31; 38; 39; 40; 41; 42; 43.

For the reasons set forth below, SwedishAmerican seeks *in camera* treatment of following portions of the deposition transcripts of Richard Walsh, William Gorski and Kevin Lewis:

Walsh deposition:

18:10-20:16; 25:21-27:20; 30:4-34:10; 34:11-35:12; 35:20-47:25; 48:10-55:19; 55:20-56:12; 56:13-62:3; 62:4-62:11; 62:12-67:16; 76:14-81:16; 81:17-82:8; 83:1-85:8; 86:5-90:16; 91:2-115:11; 119:4-120:14; 120:15-120:20; 120:21-132:1; 133:14-150:14; 150:15-151:8; 151:9-152:5; 152:6-152:12; 152:13-154:22; 154:23-155:5; 157:9-157:20; 160:7-162:7; 164:23-167:9 172:21-174:20 174:21-175:1 175:2-6; 177:1-180:25; 185:1-192:25; 193:1-193:10; 194:11-195:15.

Gorski deposition

9:24-14:10; 17:7-19:2; 22:20-25:5; 15:17-26:11; 27:11-27:16; 28:5-28:8; 29:1-29:5; 29:25-32:4; 37:10-38:14; 41:4-43-25; 44:6-49:14; 50:6-51:23; 52:17-57:15; 58:11-59:14; 60:10-60:17; 61:10-65:19; 66:21-78:18; 79:8-79:10; 80:10-80:23; 81:6-85:16; 86:16-94:8; 95:22-96:7; 98:5-99:19; 103:3-105:14; 105:22-108:20; 115:5-115:12; 117:3-123:4; 124:14-127:10; 128:3-129:14; 130:3-131:16; 132:13-135:6; 136:1-138:6; 140:3-141:20; 143:15-145:1; 145:8-149:7; 149:21-150:6; 151:21-162:21; 162:11-166:1; 166:22-173:3; 173:15-174:9; 175:8-175:11; 175:19-179:1; 179:8-181:14; 181:23-183:11; 184:6-194:22; 198:13-201:9; 203:2-203:15; 204:16-205:7; 206:3-207:4; 207:21-208:14; 212:8-212:11; 212:17-212:23; 213:3-215:9; 218:7-218:22; 219:16-222:9; 222:17-224:17; 226:2-226:8.

Lewis deposition

13:3 – 13:16; 16:20 – 18:9; 18:12 – 20:19; 20:23 – 21:11; 22:20 – 23:2; 23:5 – 24:6; 24:21 – 26:7; 26: 24 – 27:5; 27:11 – 28:11; 28:19 – 36:3; 39:10 – 40:24; 41:14 – 42:23; 43:2 – 46:20; 47:13 – 49:24; 50:12 – 53:1; 53:10 – 54:23; 56:20 – 58:11; 59:17 – 75:2; 75:10 – 80:13; 80:24 – 87:6; 87:23 – 89:10; 90:17 – 95:8; 95:12 – 98:15; 99:19 – 100:9; 100:23 – 101:4; 101:12 – 101:18; 102:4 – 113:11; 113:15 – 122:23; 123:20 – 125:9; 126:7 – 131:8; 133:20 – 134:6; 136:15 – 149:24; 150:10 – 155:25; 156:9 – 158:10.

II. SWEDISHAMERICAN'S CONFIDENTIAL DOCUMENTS QUALIFY FOR *IN CAMERA* TREATMENT UNDER THE FEDERAL TRADE COMMISSION STANDARDS

Rule 3.45(b) of the Commission Rules of Practice provides, in relevant part, that a non-party may obtain *in camera* treatment of certain documents if the documents' public disclosure

“will likely result in a clearly defined, serious injury.” 16 C.F.R. §3.45(b). A clearly defined serious injury can be shown by “establishing that the documentary evidence is ‘sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury’ . . .” *In re North Texas Specialty Physicians*, 2004 WL 1571167 (F.T.C.) (quoting *In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984)). In determining secrecy and materiality, the Federal Trade Commission considers the following factors:

- (1) the extent to which the information is known outside of [the Company’s] business;
- (2) the extent to which it is known by employees and others involved in his business;
- (3) the extent of measures taken by [the Company] to guard the secrecy of the information;
- (4) the value of the information to [the Company] and to [its] competitors;
- (5) the amount of effort or money expended by [the Company] in developing the information;
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Bristol-Myers Co., 90 F.T.C. 455, 456 (1977) (quoting Restatement of Torts § 757, Comment b at 6 (1939)). The documents and deposition testimony at issue here meet those criteria and are sufficiently secret and material to SwedishAmerican, such that the disclosure of those documents and deposition testimony would cause serious competitive injury. Walsh decl. ¶¶7, 10, 13 (See Attachment C).

III. THE DOCUMENTS AT ISSUE ARE SUFFICIENTLY MATERIAL AND SECRET SUCH THAT DISCLOSURE WOULD CAUSE COMPETITIVE INJURY TO SWEDISHAMERICAN

A. SWEDISHAMERICAN HAS PRESERVED THE CONFIDENTIALITY OF THE DOCUMENTS AND TRANSCRIPTS IN QUESTION

SwedishAmerican has taken substantial measures to ensure the confidentiality of the documents and deposition testimony at issue in this motion. SwedishAmerican only shares the information included in the documents and deposition testimony with those at SwedishAmerican who need to know it in order to perform their jobs. Walsh decl. ¶4. The information is not known outside of SwedishAmerican, except to the extent necessary to conduct confidential

business - for example to engage in contract negotiations or to enter into confidential joint venture arrangements. *Id.* When producing these documents, SwedishAmerican requested that they be treated as confidential, as that term is defined under the protective order in this matter. Walsh decl. ¶4. These efforts demonstrate that SwedishAmerican has gone through great efforts to preserve the confidentiality of the documents and deposition testimony at issue here.

B. PUBLIC DISCLOSURE OF THE MATERIAL IN QUESTION WOULD CAUSE SWEDISHAMERICAN SERIOUS COMPETITIVE INJURY

The confidential portions of the transcripts, declarations and the documents, for the most part, fall into three categories: (a) managed care contracting; (b) strategic plans, and (c) costs.² These three categories represent highly sensitive and competitive information. Indeed, as Respondents are SwedishAmerican's primary competitors, release of this information to Respondents alone could result in serious competitive harm to SwedishAmerican.

(a) Excerpts and Documents Related to Managed Care Contracting

The information contained in the excerpts relating to managed care contracting is treated by SwedishAmerican as highly confidential and is not shared with anyone other than those individuals at SwedishAmerican who are involved in the managed care contract negotiation process. Walsh decl. ¶7. The information includes contract terms, contracting strategies, rate analyses, and other information related to SwedishAmerican's negotiations with managed care plans. *Id.* This information is highly confidential and commercially sensitive. *Id.* If this information were made public, it could provide managed care payors with access to information that they could use to their advantage in future negotiations which would decrease the ability of SwedishAmerican to negotiate effectively. *Id.* In addition, public disclosure would give

² The few excerpts that do not fall neatly into one of these categories are addressed separately in the list of excerpts.

SwedishAmerican's competitors (the Respondents in this matter) an unearned competitive advantage. As a result, disclosure of this information could result in serious competitive injury to SwedishAmerican. *Id.*

The following documents are confidential documents related to managed care contracting. SAH-00006981; SAH-00006982-SAH-00006992; SAH-00006994-SAH-00007000; SAH-00007005; SAH-00007006; SAH-00007011-SAH-00007014; SAH-00007015-SAH-00007021; SAH-00007024-SAH-00007027; DX 0380-001; DX 0337-001-019; DX0346-001.³ (See Exhibit 1 of Attachment C).

In addition, the following deposition transcript excerpts are confidential discussions related to managed care contracting. **Walsh dep.** 48:10-55:19; 55:20-56:12; 56:13-62:3; 62:4-62:11;. 62:12-67:16; 133:14-150:14; 152:13-154:22; 168:15-169:21; 172:21-174:20; 174:21-175:1; 175:2-6; 185:1-192:25; 194:11-195:15. (See Exhibit 3 of Attachment C); **Lewis dep.** 13:3 – 13:16; 16:20 – 18:9; 18:12 – 20:19; 20:23 – 21:11; 22:20 – 23:2; 23:5 – 24:6; 24:21 – 26:7; 26:24 – 27:5; 27:11 – 28:11; 28:19 – 36:3; 39:10 – 40:24; 41:14 – 42:23; 43:2 – 46:20; 47:13 – 49:24; 50:12 – 53:1; 53:10 – 54:23; 56:20 – 58:11; 59:17 – 75:2; 75:10 – 80:13; 80:24 – 87:6; 87:23 – 89:10; 90:17 – 95:8; 95:12 – 98:15; 99:19 – 100:9; 100:23 – 101:4; 101:12 – 101:18; 102:4 – 113:11; 113:15 – 122:23; 123:20 – 125:9; 126:7 – 131:8; 133:20 – 134:6; 136:15 – 149:24; 150:10 – 155:25; 156:9 – 158:10. (See Exhibit 4 of Attachment C); **Gorski dep.**; 12:22-14:10; 145:8-149:7; 149:21-150:6; 151:21-162:21; 163:11-166:1; 166:22-173:3; 173:15-174:9; 175:8-175:11; 175:19-179:1; 212:17-212:23; 213:3-215:9; 226:2-226:8. (See Exhibit 5 of Attachment C); **Gorski decl.** ¶19; ¶22. (See Exhibit 6 of Attachment C).

³ It is our understanding these documents were provided by United Healthcare. However they are the contracts between United and SwedishAmerican, and thus SwedishAmerican requests *in camera* treatment of these competitively sensitive documents.

(b) Excerpts and Documents Related to Strategic Plans

The information contained in the excerpts relating to strategic plans also is treated by SwedishAmerican as highly confidential and is not shared with anyone other than those individuals at SwedishAmerican who are involved in strategic planning for SwedishAmerican and those individuals who need access to particular parts of this information in order to perform their jobs at SwedishAmerican. Walsh decl. ¶10. This information includes SwedishAmerican's assessment of the market needs, strengths and weaknesses of SwedishAmerican, and future business plans of SwedishAmerican. SwedishAmerican's self assessment and strategic planning resulting from that assessment allowed SwedishAmerican to become a successful and financially sound hospital in Rockford. *Id.* This information also includes current affiliation arrangements with the University of Wisconsin and employment models and strategies with employed physicians. In addition, these documents represent proprietary research done on behalf of SwedishAmerican which evaluates and assesses the hospitals in the market based on performance. Although some of the information in some of these documents was derived from public sources, these portions are proprietary and qualify as trade secrets because their creation required laborious (and expensive) accumulation, culling, and analysis. In addition, the information in some of these documents could provide Respondents with information regarding SwedishAmerican's strengths and weaknesses as they relate to a potential merged entity.

In sum, the information in these documents is highly confidential and is only shared with those in management at SwedishAmerican who need to know the information in order to develop strategic plans for SwedishAmerican. The SwedishAmerican management team has expended numerous hours and many years to develop these strategies. *Id.* If this information were made public it could give SwedishAmerican's competitors (the Respondents) insights that would allow them to undercut or replicate SwedishAmerican's plans and strategies. *Id.* It would give its

competitors (the Respondents in this matter) an unearned competitive advantage and could cause SwedishAmerican serious competitive injury. *Id.*

The following documents are confidential documents related to SwedishAmerican's strategic plans: SAH-00005729- SAH-00005752; SAH-00005753- SAH-00005763; SAH-00005770-SAH-00005791; SAH-00005792-SAH-00005818; SAH-00005819-SAH-00005846; SAH-00005847-SAH-00005872; SAH-00005873-SAH-00005874; SAH-00005875; SAH-00005876; SAH-00005877; SAH-00005878; SAH-00006544-SAH-00006547; SAH-00006924-SAH-00006973; SAH-00006548-SAH-00006697; SAH-00006734-SAH-00006735; SAH-00006768; SAH-00006859- SAH-00006916; SAH-00007074-SAH-00007091; SAH-00007092-SAH-00007094; SAH-00007095-SAH-00007117; SAH-00007118-SAH-00007128; SAH-00007129-SAH-00007139; SAH-00007140-SAH-00007150; SAH-00007151- SAH-00007161; SAH-00007162-SAH-00007172; SAH-00007173-SAH-00007183; SAH-00007184-SAH-00007194; SAH-00007195-SAH-00007205; DX 0242-001-DX 0242-0019 (FTC-ROPE-004133 to 4151); DX 1077-001-DX 1077-0019.⁴ (See Exhibit 2 of Attachment C).

The following deposition excerpts are confidential documents related to SwedishAmerican's strategic plans: **Walsh dep.** 18:10-20:16; 25:21-27:20; 30:4-34:10; 34:11-35:12; 35:20-47:25; 76:14-81:16; 81:17-82:8; 83:1-85:8; 86:5-90:16; 91:2-115:11; 150:15-151:8; 151:9-152:5; 152:6-152:12; 152:13-154:22; 154:23-155:5; 157:9-157:20; 160:7-162:7; 164:23-167:9; 177:1-180:25; 185:1-192:25; 193:1-193:10. (See Exhibit 3 of Attachment C); **Gorski dep.** 9:24-12:21; 17:7-19:2; 22:20-25:5; 25:17-26:11; 27:11-27:16; 28:5-28:8; 29:1-29:5; 29:25-32:4;

⁴ We were not provided with a copy of the document that has been labeled as DX 1077-001-DX 1077-0019; however it is our understanding it is the same document (with different exhibit number) as DX 0242-001-DX 0242-0019 (FTC-ROPE-004133 to 4151).

37:10-38:14; 41:4-43:25; 44:6-49:14; 50:6-51:23; 52:17-57:15; 58:11-59:14; 60:10-60:17; 61:10-65:19; 66:21-78:18; 79:8-79:10; 80:10-80:21; 81:6-85:16; 86:16-94:8; 95:22-96:7; 98:5-99:19; 103:3-105:14; 105:22-108:20; 115:5-115:12; 117:3-123:4; 124:14-125:7; 128:3-129:14; 130:3-131:16; 132:13-135:6; 136:1-138:6; 140:3-141:20; 143:15-145:1; 179:8-181:14; 181:23-183:11; 184:6-185:13; 185:14-194:22; 198:13-201:9; 203:2-203:15; 204:16-205:7; 206:3-207:4; 207:21-208:14; 212:8-212:11; 218:7-218:22; 219:16-222:9; 222:17-224:17. (See Exhibit 5 of Attachment C); **Gorski decl.** ¶¶ 5;6; 9; 17; 26; 27; 31; 38; 39; 40; 41; 42; 43. (See Exhibit 6 of Attachment C).

(c) Excerpts and Documents Related to Costs

The information contained in the excerpts relating to costs is treated by SwedishAmerican as highly confidential and is not shared with anyone other than those individuals at SwedishAmerican who need to know this information in order to perform their jobs. Walsh decl. ¶13. If this information were made public, it could give managed care payors information that they could use to their advantage in future negotiations with SwedishAmerican. *Id.* It would provide an unearned competitive advantage to SwedishAmerican's competitors—the Respondents in this matter. *Id.* The disclosure of this information could cause SwedishAmerican serious competitive injury. *Id.*

The following document is a confidential document related to SwedishAmerican's costs or other confidential financial information: PX 1266 (See Exhibit 7 of Attachment C); The following deposition transcripts are confidential documents related to SwedishAmerican's costs or other confidential financial information: **Walsh dep.** 119:4-120:14; 120:15-120:20; 120:21-132:1; 133:14-150:14 (See Exhibit 3 of Attachment C); **Gorski dep.** 125:7-127:10 (See Exhibit 5 of Attachment C).

C. THE PUBLIC’S INTEREST IN HAVING FREE ACCESS TO THESE DOCUMENTS IS OUTWEIGHED BY LIKELIHOOD OF SERIOUS COMPETITIVE HARM TO SWEDISHAMERICAN

SwedishAmerican is a non-party to this matter and as such “deserve[s] special solicitude.” *In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (1984). “As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.” *Id.* Moreover, the public’s understanding of the issues involved in this case does not depend on the public’s access to SwedishAmerican’s confidential documents. The public’s interest in full disclosure of the documents is clearly outweighed by the likelihood of serious competitive harm to SwedishAmerican.

D. PROTECTION SHOULD EXTEND FOR YEARS AS REQUESTED BELOW

The nature of the highly confidential information contained in the documents and deposition transcripts described above warrants lasting protection from public disclosure. Documents related to strategic plans represent a significant investment of time, effort and expense by SwedishAmerican. In addition, strategic plans are often long ranging (often over a course of 3-5 years) and/or take years to implement. Because documents related to SwedishAmerican’s strategic plans provide confidential insight into SwedishAmerican’s business plans for years to come, SwedishAmerican requests that documents and deposition testimony described above as containing strategic planning information, be afforded *in camera* protection for a period of ten (10) years. Documents related to managed care contracting and costs also warrant lasting protection. In that regard, SwedishAmerican requests that documents related to managed care contracting and costs be afforded *in camera* protection for a period of five (5) years.

IV. CONCLUSION

For the foregoing reasons, the documents and deposition testimony at issue here are sufficiently secret and material to SwedishAmerican, such that the disclosure of those documents and deposition testimony would cause serious competitive injury. Therefore, SwedishAmerican respectfully requests that *in camera* treatment be afforded to the documents and testimony described herein.

Respectfully submitted,



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Dated: March 20, 2012

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

In the Matter of

**OSF Healthcare System
a corporation, and**

**Rockford Health System,
a corporation.**

Docket No. 9349

Chief Administrative Law
Judge D. Michael Chappell

PROPOSED ORDER

On March 20, 2012 non-party SwedishAmerican Health System filed a Motion and Memorandum in support to provide *in camera* treatment to certain documents and testimony identified by Complaint Counsel and Respondents' Counsel for potential use as trial exhibits.

It is hereby ordered that SwedishAmerican's motion is granted. The documents and testimony set forth in Exhibits 1, 2, 3, 4, 5, 6, and 7 of Attachment C of SwedishAmerican's motion will be subject to *in camera* treatment under 16 C.F.R. §3.45 and will be kept confidential and not placed in the public record for the period of time as set forth below.

The documents in Exhibits 1 and 7 of Attachment C of the SwedishAmerican motion shall be afforded *in camera* treatment for a period of five (5) years. The documents and testimony in Exhibits 2, 3, 4, 5 and 6 of Attachment C shall be afforded *in camera* treatment for a period of ten (10) years.

IT IS FURTHER ORDERED that only authorized Federal Trade Commission personnel and court personnel concerned with judicial review may have access to the above-referenced

information, provided that I, the commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

ORDERED: _____
D. Michael Chappell
Administrative Law Judge

Dated: _____

CERTIFICATE OF SERVICE

I hereby certify that on this date, I caused a copy of the public version of the foregoing document to be electronically filed to:

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

I further certify that on this date, a copy of the public version was sent by hand delivery:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW, H-106
Washington, DC 20580

Matthew J. Reilly
Federal Trade Commission
601 New Jersey Avenue, NW, NJ-5245
Washington, DC 20001
Complaint Counsel

I further certify that on this date, a copy of the public version of the foregoing document was sent by federal express to:

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Dated: March 20, 2012

ATTACHMENT A

McDermott Will & Emery

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March 13, 2012

**VIA E-MAIL PWAGNER@EBGLAW.COM
BY U.S. MAIL**

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

Dear Ms. Wagner:

I write on behalf of Respondents to provide notice to your client, SwedishAmerican Health System, of Respondents' intent to offer your client's materials as evidence at the hearing in the above-referenced matter, pursuant to 16 C.F.R. § 3.45(b) and the Scheduling Order issued by Judge Chappell on December 20, 2011. Below are testimony excerpts and a list of documents, including a declaration and those documents that your client submitted in response to Civil Investigative Demands and Subpoenas *Duces Tecum* issued by Complaint Counsel and Respondent Counsel in this matter, and that Respondents intend to introduce as evidence at the hearing scheduled to commence on April 17, 2012.

Req. Bates	End Bates	Date	Description / Title
SAH-00000001	SAH-00000183	9/17/1997	Memorandum in Support of the Proposed Acquisition of SwedishAmerican by OSF
SAH-00005608	SAH-00005610	N/A	SwedishAmerican Average Daily Census, 2007 through 2011
SAH-00005729	SAH-00005752	7/29/2010	Consumer Preference Update
SAH-00005753	SAH-00005763	May 2011	SwedishAmerican Consumer Preference Survey Update, 5/11
SAH-00005764	SAH-00005766	N/A	Strategic Deployment Pillar/Market Share Report
SAH-00005770	SAH-00005791		Physician Employment Agreement (Urgent Care Physician) SwedishAmerican
SAH-00005792	SAH-00005818		Physician Employment Agreement SAH

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

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Beg Bates	End Bates	Date	Description / Title
SAH-00005819	SAH-00005846		Physician Employment Agreement SAH
SAH-00005847	SAH-00005872		Physician Employment Agreement SAH
SAH-00005873	SAH-00005874	N/A	SwedishAmerican 2008 Recruitment Physician Plan
SAH-00005875	SAH-00005875	N/A	SwedishAmerican 2009 Physician Recruitment Plan
SAH-00005876	SAH-00005876	N/A	SwedishAmerican 2010 Physician Recruitment Plan
SAH-00005877	SAH-00005877	N/A	SwedishAmerican 2011 Physician Recruitment Plan
SAH-00005878	SAH-00005878	N/A	SwedishAmerican 2011-2012 Physician Recruitment Plan
SAH-00006544	SAH-00006547	N/A	University Health Care Inc. and SwedishAmerican Hospital Affiliation Agreement Overview
SAH-00006548	SAH-00006697	02/10/2010	Navigant Consulting Environmental Assessment for SwedishAmerican Hospital
SAH-00006548	SAH-00006697	2/10/2010	Navigant Consulting SwedishAmerica Hospital Environmental Assessment, 2/10/2010
SAH-00006548	SAH-00006697	2/10/2010	Navigant Consulting Environmental Assessment for SwedishAmerican Hospital COLOR VERSION - USE GOING FORWARD
SAH-00006734	SAH-00006735	6/5/2011	Coventry/SAHS ACO
SAH-00006768	SAH-00006768	N/A	SAHS Press Ganey Inpatient Means and Ranks 2007-2009
SAH-00006859	SAH-00006916	N/A	SAH Organizational Document
SAH-00006924	SAH-00006973	3/1/2010	Affiliation Agreement between University Healthcare Inc. and SwedishAmerican Hospital
SAH-00006981	SAH-00006981		Rate Proposal for UnitedHealthcare
SAH-00006982	SAH-00006992		All Payer Appendix SwedishAmerican Hospital and SwedishAmerican Belvidere Medical Center
SAH-00006994	SAH-00007000	6/22/2009	Contract Negotiations Summary ECOH and SAHS
SAH-00007005	SAH-00007005		SAH Trended Financials and Negotiation Options BlueCross HMOL/PCN Business

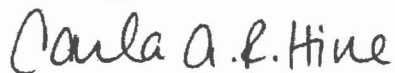
Beg Bates	End Bates	Date	Description / Title
SAH-00007006	SAH-00007006		BlueCross PPO Contract FY2010 - FY2013 Rate Forecast by Category
SAH-00007011	SAH-00007014		Contract Comparison cag BLC HMOI CPI Rate Increase Impact
SAH-00007015	SAH-00007021	11/5/2010	Email chain between Kevin Lewis and Christie Geltzman (SAH) re: BCBS PPO Update
SAH-00007024	SAH-00007027	5/25/2011	Email Chain between Kevin Lewis and Donald Haring re: SwedishAmerican Price Adjustment notice dated 5/25/2011
SAH-00007024	SAH-00007027	5/25/2011	Email Chain between Kevin Lewis and Donald Haring re: SwedishAmerican Price Adjustment notice to personalcare and medicare product update
SAH-00007074	SAH-00007091	N/A	Market Analysis related to OSF acquisition of RMH Presentation
SAH-00007092	SAH-00007094	N/A	Market Analysis Notes
SAH-00007095	SAH-00007117	6/30/2010	SwedishAmerican Health System, CEO Report to General Management, Dr. Bill Gorski
SAH-00007118	SAH-00007128	Oct. 2010	SwedishAmerican Health System Leadership Scorecard October 2010
SAH-00007129	SAH-00007139	March 2011	SwedishAmerican Health System Leadership Scorecard March 2011
SAH-00007140	SAH-00007150	Dec. 2010	SwedishAmerican Health System Leadership Scorecard December 2010
SAH-00007151	SAH-00007161	Feb. 2011	SwedishAmerican Health System Leadership Scorecard February 2011
SAH-00007162	SAH-00007172	Sept. 2010	SwedishAmerican Health System Leadership Scorecard September 2010
SAH-00007173	SAH-00007183	July 2011	SwedishAmerican Health System Leadership Scorecard July 2011
SAH-00007184	SAH-00007194	April 2011	SwedishAmerican Health System Leadership Scorecard April 2011
SAH-00007195	SAH-00007205	Jan. 2011	SwedishAmerican Health System Leadership Scorecard January 2011
SWH0000001	SWH0000026	09/17/1997	Memo in Support of Proposed Acquisition of SwedishAmerican By OSF Health Care System
SWH-0000001	SWH-0000154	N/A	Exhibits to 1997 Memorandum in Support
N/A	N/A	02/24/2011	Presentation Slides for SAH System Meeting with FTC Staff

Beg Bates	End Bates	Date	Description / Title
N/A	N/A	05/31/2011	SwedishAmerican Hospital and Subsidiaries Consolidated Financial Report
N/A	N/A	10/26/2011	Swedish American Hospital and Subsidiary Financial Statements as of 8/31/11 and 5/31/11 and three months ended 8/31/11 and 2010
N/A	N/A	01/06/2012	Richard Walsh Deposition Transcript Designations at 5:11-13; 6:10-10:6; 10:21-12:6; 12:19-13:7; 13:16-24; 15:14-20; 16:14-18:3; 18:10-20:16; 20:22-21:1; 21:7-21:18; 21:22-22:14; 23:3-13; 23:22-25:8; 25:21-27:20; 28:4-6; 28:11-23; 29: 2-9; 30:4-34:10; 34:14-35:3; 35:13-15; 35:20-47:25; 48:10-55:19; 56:13-62:3; 62:12-67:16; 69:9-12; 71:14-72:15; 73:17-75:6; 76:14-81:16; 82:9-21; 83:1-85:8; 86:5-90:16; 91:2-115:11; 119:4-120:14; 120:21-132:1; 132:5-8; 133:14-150:14; 151:9-152:5; 152:13-154:22; 156:16-157:8; 158:4-8; 158:19-159:23; 160:7-162:7; 164:8-15; 164:23-167:9; 168:15-169:21; 172:21-174:20-175:2-6; 188:24-189:24; 196:6-23; 197:2-4
N/A	N/A	1/13/2012	Declaration of William Gorski, 1/13/2012
N/A	N/A	1/31/2012	William Gorski (SAHS) Deposition Transcript Designations at 5:9-6:1; 6:11-14:24; 16:12-17:22; 18:3-21:25; 22:8-23:23; 25:6-9; 25:17-27:11; 27:18-28:13; 29:6-29:21; 30:2-32:18; 32:23-33:15; 33:22-38:14; 40:21-41:24; 42:5-46:21; 49:15-21; 50:6-51:23; 52:4-54:22; 56:5-71:16; 72:2-75:17; 76:17-84:19; 85:1-88:10; 88:17-90:25; 93:9-96:7; 98:5-103:2; 103:19-109:18; 113:15-117:9; 118:5-122:10; 124:21-125:4; 125:8-127:10; 128:3-138:2; 138:15-139:12; 140:19-142:12; 143:15-145:1; 145:8-15; 146:1-149:20; 150:7-152:25; 153:17-156:10; 156:15-157:6; 157:14-158:22; 159:3-165:4; 166:2-167:4; 171:22-172:7; 172:18-174:15; 175:1-7; 177:25-179:1; 180:21-187:2; 187:21-188:19; 189:9-190:2; 190:9-191:2; 191:21-192:23; 193:11-194:19; 198:13-24; 199:22-200:16; 200:22-201:9; 202:11-203:1; 203:16-204:15; 206:7-207:3; 225:9-22

Patricia Wagner, Esq.
March 13, 2012
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Beg Bates	End Bates	Date	Description / Title
N/A	N/A	2/10/2012	Kevin Lewis (SAHS) Deposition Transcript Designations at 5:14-16; 7:21-26:1; 26:3-12; 26:14-25; 27:2-28:4; 28:12-25; 29:6-32:7; 32:23-36:25; 39:6-40:7; 41:22-46:22; 46:24-48:3; 48:9-49:24; 51:1-52:4; 52:6-54:8; 54:11-55:20; 56:20-59:24; 61:24-62:15; 62:22-63:4; 63:12-64:11; 64:18-69:8; 69:21-72:18; 74:17-76:1; 76:19-78:9; 78:16-82:17; 83:24-84:11; 84:15-86:15; 86:17-88:23; 89:13-96:24; 97:13-98:8; 98:16-102:11; 102:20-24; 110:11-18; 110:20-121:13; 121:19-122:18; 122:24-126:6; 157:15-158:3; 158:16-159:17; 159:22-160:1; 160:3-4; 160:8-13; 160:15-22; 160:24-25

Sincerely,



Carla A. R. Hine

DM_US 32347099-1.046498.0021

ATTACHMENT B



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

Bureau of Competition
Mergers IV

March 13, 2012

VIA FEDERAL EXPRESS

SwedishAmerican Health System
c/o Patricia Wagner, Esq.
Epstein Becker and Green, P.C.
1227 25th Street, N.W., Suite 700
Washington, D.C. 20037

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

Dear Ms. Wagner:

By this letter we are providing formal notice to SwedishAmerican Health System, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Complaint Counsel intends to offer the material referenced in Attachment A into evidence in the administrative trial in the above-captioned matter. For your convenience, I have enclosed a disc containing the material referenced in Attachment A. The administrative trial is scheduled to begin on April 17, 2012. All exhibits admitted into evidence become part of the public record unless *in camera* status is granted by Administrative Law Judge D. Michael Chappell.

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or rejected as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment. For example, judges have granted *in camera* motions after non-parties to a proceeding demonstrated that public disclosure of commercially sensitive information would expose them to serious competitive disadvantage; that they had taken and continued to take measures to guard the secrecy of the information; and that the documents at issue had not been widely disseminated.

Motions for *in camera* treatment for evidence to be introduced at trial must meet the standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC

LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000) and 2000 FTC LEXIS 138 (Sept. 19, 2000); *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006). Motions also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004). For your convenience, I have provided two examples of third-party motions (and their accompanying declarations or affidavits) for *in camera* treatment that were filed and granted in a recent FTC administrative proceeding.

Please be aware that under the current Scheduling Order dated December 20, 2011, the deadline for filing motions seeking *in camera* status is **March 20, 2012**.

In addition, please provide a written declaration from the appropriate individual at the company pursuant to Rule 3.43(c) of the Commission's Rules of Practice, 16 C.F.R. § 3.43(c). In that declaration a custodian of records or other qualified person must certify that the Business Documents referenced in Attachment A were made at or near the time of the occurrence of the matters set forth by, or from information transmitted by, a person with knowledge of those matters; were kept in the course of regularly conducted activity; and were made as a regular practice in the course of the regularly conducted activity of the company. For your convenience, I have attached a sample declaration. Please feel free to contact me, Sarah Swain, or any other attorney at the FTC with whom you have had regular contact to discuss the contents of an appropriate declaration after you have had a chance to review this letter and its attachments.

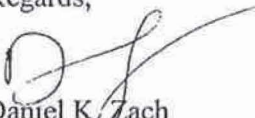
After the appropriate individual has signed the declaration, please email me and Sarah Swain a PDF copy of the signed declaration at the email addresses provided below and send the signed original version of the declaration via Federal Express to the following address:

Sarah Swain
Federal Trade Commission
Room 5146A
601 New Jersey Avenue, NW
Washington, DC 20001

Please execute and deliver the declaration to us as soon as possible and, in any event, no later than **March 30, 2012**.

If you have any questions, please feel free to contact me at (202) 326-2118 or at dzach@ftc.gov or Sarah Swain at (202) 326-2639 or at sswain@ftc.gov. Thank you.

Regards,



Daniel K. Zach

Attachments

Attachment A

In the Matter of OSF Healthcare System, and Rockford Health System, Docket No. 9349
List of SwedishAmerican Health System Exhibits Marked by Complaint Counsel

Business Documents

Exhibit No.	Beg Bates	End Bates	Date	Description
PX1254	SWH-0000001	SWH-0000026	9/17/1997	Memorandum in Support of the Proposed Acquisition of SwedishAmerican by OSF (1997 White Paper)
PX1263	n/a	n/a	4/11/2011	SwedishAmerican's Return of Organization Exempt from Income Tax 2009 - Form 990
PX1265	FTC-ROPE-004153	FTC-ROPE-004155	9/26/2008	Letter to Brand from Lutes re: Contracting with Hospitals in Rockford area
PX1266	FTC-SWE-000000725	FTC-SWE-000000729	5/00/2011	SwedishAmerican Hospital Financial Statement May 2011

Other Materials

Exhibit No.	Beg Bates	End Bates	Date	Description
PX0289	n/a	n/a	1/13/2012	Declaration of William Gorski MD. (SwedishAmerican Health System)
PX4000	n/a	n/a	1/6/2012	Designated Deposition Transcript of Richard Walsh (SwedishAmerican)
PX4051	n/a	n/a	1/31/2012	Designated Deposition Transcript of William Gorski, M.D. (SwedishAmerican)
PX4060	n/a	n/a	2/10/2012	Designated Deposition Transcript of Kevin Lewis (SwedishAmerican)

ATTACHMENT C

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

OSF Healthcare System
a corporation, and

Rockford Health System
a corporation

Docket No. 9349

DECLARATION OF RICHARD WALSH

I, Richard Walsh, pursuant to 28 U.S.C. § 1746, make the following statement:

1. I am currently employed by SwedishAmerican Health System in the position of Executive Vice President and Chief Operating Officer and am President of SwedishAmerican Hospital. In those positions I am responsible for the day to day operations of the entire health system. I am also involved, as part of the leadership team, with strategic planning and implementation for the health system. I have held these positions at SwedishAmerican for over seventeen years.
2. I am aware of the Business Documents in the attached exhibits that have been identified by Respondents' Counsel and Complaint Counsel. It is my understanding that Respondents' Counsel and Complaint Counsel may introduce some of these documents into evidence in the administrative hearing.
3. I am also aware of the deposition transcripts and the declaration of William Gorski in the attached exhibits. It is my understanding that Respondents' Counsel and Complaint Counsel may introduce portions of these documents into evidence in the administrative hearing.
4. SwedishAmerican has taken substantial measures to ensure the confidentiality of all of the documents and designated portions of the deposition transcripts and declaration as

confidential. Such information is treated by SwedishAmerican as highly confidential and is not shared with anyone other than those individuals at SwedishAmerican who need to know this information in order to perform their jobs. When producing these documents SwedishAmerican requested that they be afforded confidential treatment.

5. The following documents are confidential documents related to managed care contracting. SAH-00006981; SAH-00006982-SAH-00006992; SAH-00006994-SAH-00007000; SAH-00007005; SAH-00007006; SAH-00007011-SAH-00007014; SAH-00007015-SAH-00007021; SAH-00007024-SAH-00007027; DX 0380-001; DX 0337-001-019; DX0346-001.¹ (See Exhibit 1).
6. In addition, the following deposition transcript excerpts are confidential discussions related to managed care contracting.

Walsh dep. 48:10-55:19; 55:20-56:12; 56:13-62:3; 62:4-62:11; 62:12-67:16; 133:14-150:14; 152:13-154:22; 168:15-169:21; 172:21-174:20; 174:21-175:1; 175:2-6; 185:1-192:25; 194:11-195:15. (See Exhibit 3).

Lewis dep. 13:3 – 13:16; 16:20 – 18:9; 18:12 – 20:19; 20:23 – 21:11; 22:20 – 23:2; 23:5 – 24:6; 24:21 – 26:7; 26: 24 – 27:5; 27:11 – 28:11; 28:19 – 36:3; 39:10 – 40:24; 41:14 – 42:23; 43:2 – 46:20; 47:13 – 49:24; 50:12 – 53:1; 53:10 – 54:23; 56:20 – 58:11; 59:17 – 75:2; 75:10 – 80:13; 80:24 – 87:6; 87:23 – 89:10; 90:17 – 95:8; 95:12 – 98:15; 99:19 – 100:9; 100:23 – 101:4; 101:12 – 101:18; 102:4 – 113:11; 113:15 – 122:23; 123:20 – 125:9; 126:7 – 131:8; 133:20 – 134:6; 136:15 – 149:24; 150:10 – 155:25; 156:9 – 158:10.
(See Exhibit 4).

¹ It is our understanding these documents were provided by United Healthcare. However they are the contracts between United and SwedishAmerican, and thus SwedishAmerican requests *in camera* treatment of these competitively sensitive documents.

Gorski dep.; 12:22-14:10; 145:8-149:7; 149:21-150:6; 151:21-162:21; 163:11-166:1; 166:22-173:3; 173:15-174:9; 175:8-175:11; 175:19-179:1; 212:17-212:23; 213:3-215:9; 226:2-226:8. (See Exhibit 5)

Gorski decl. ¶19; ¶22. (See Exhibit 6).

7. Documents and information relating to managed care contracting are treated by SwedishAmerican as highly confidential and is not shared with anyone other than those individuals at SwedishAmerican who are involved in the managed care contract negotiation process. The information includes contract terms, contracting strategies, rate analyses, and other information related to SwedishAmerican's negotiations with managed care plans. This information is highly confidential and commercially sensitive information. If this information were made public, it could provide managed care payors with access to information that they could use to their advantage in future negotiations which would decrease the ability of SwedishAmerican to negotiate effectively. In addition, public disclosure would give SwedishAmerican's competitors an unearned competitive advantage. As a result, disclosure of this information could result in serious competitive injury to SwedishAmerican.
8. The following documents are confidential documents related to SwedishAmerican's strategic plans: SAH-00005729- SAH-00005752; SAH-00005753- SAH-00005763; SAH-00005770- SAH-00005791; SAH-00005792-SAH-00005818; SAH-00005819- SAH-00005846; SAH-00005847-SAH-00005872; SAH-00005873-SAH-00005874; SAH-00005875- SAH-00005875; SAH-00005876-SAH-00005876; SAH-00005877- SAH-00005877; SAH-00005878-SAH-00005878; SAH-00006544-SAH-00006547; SAH-00006924-SAH-00006973; SAH-00006548-SAH-00006697; SAH 00006734- SAH-00006735; SAH-00006768-SAH-00006768; SAH-00006859- SAH-00006916;

SAH-00007074-SAH-00007091; SAH-00007092-SAH-00007094; SAH-00007095-SAH-00007117; SAH-00007118-SAH-00007128; SAH-00007129-SAH-00007139; SAH-00007140-SAH-00007150; SAH-00007151- SAH-00007161; SAH-00007162-SAH-00007172; SAH-00007173-SAH-00007183; SAH-00007184-SAH-00007194; SAH-00007195-SAH-00007205; DX 0242-001-DX 0242-0019 (FTC-ROPE-004133 to 4151); DX 1077-001-DX 1077-0019. (See Exhibit 2).

9. The following deposition excerpts are confidential documents related to SwedishAmerican's strategic plans:

Walsh dep. 18:10-20:16; 25:21-27:20; 30:4-34:10; 34:11-35:12; 35:20-47:25; 76:14-81:16; 81:17-82:8; 83:1-85:8; 86:5-90:16; 91:2-115:11; 150:15-151:8; 151:9-152:5; 152:6-152:12; 152:13-154:22; 154:23-155:5; 157:9-157:20; 160:7-162:7; 164:23-167:9; 177:1-180:25; 185:1-192:25; 193:1-193:10. (See Exhibit 3).

Gorski dep. 9:24-12:21; 17:7-19:2; 22:20-25:5; 25:17-26:11; 27:11-27:16; 28:5-28:8; 29:1-29:5; 29:25-32:4; 37:10-38:14; 41:4-43:25; 44:6-49:14; 50:6-51:23; 52:17-57:15; 58:11-59:14; 60:10-60:17; 61:10-65:19; 66:21-78:18; 79:8-79:10; 80:10-80:21; 81:6-85:16; 86:16-94:8; 95:22-96:7; 98:5-99:19; 103:3-105:14; 105:22-108:20; 115:5-115:12; 117:3-123:4; 124:14-125:7; 128:3-129:14; 130:3-131:16; 132:13-135:6; 136:1-138:6; 140:3-141:20; 143:15-145:1; 179:8-181:14; 181:23-183:11; 184:6-185:13; 185:14-194:22; 198:13-201:9; 203:2-203:15; 204:16-205:7; 206:3-207:4; 207:21-208:14; 212:8-212:11; 218:7-218:22; 219:16-222:9; 222:17-224:17. (See Exhibit 5).

Gorski decl. ¶¶ 5;6; 9; 17; 26; 27; 31; 38; 39; 40; 41; 42; 43. (See Exhibit 6).

10. The information contained in the documents relating to strategic plans also is treated by SwedishAmerican as highly confidential and is not shared with anyone other than those individuals at SwedishAmerican who are involved in strategic planning for

SwedishAmerican and those individuals who need access to particular parts of this information in order to perform their jobs at SwedishAmerican. This information includes SwedishAmerican's assessment of the market needs, strengths and weaknesses of SwedishAmerican, and future business plans of SwedishAmerican. This information also includes current affiliation arrangements with the University of Wisconsin and employment models and strategies with employed physicians. SwedishAmerican's self assessment and response to that assessment allowed SwedishAmerican to become a successful and financially sound hospital in Rockford. SwedishAmerican management team has expended numerous hours and many years to develop these strategies. If this information were made public it could give SwedishAmerican's competitors (the Respondents) insights that would allow them to undercut or replicate SwedishAmerican's plans and strategies, thereby giving SwedishAmerican's competitors (the Respondents in this matter) an unearned competitive advantage and could cause SwedishAmerican serious competitive injury.

11. The following document is a confidential document related to SwedishAmerican's costs or other confidential financial information: PX 1266-001- PX 1266-005. (See Exhibit 7).
12. The following deposition transcripts are confidential documents related to SwedishAmerican's costs or other confidential financial information:
Walsh dep. 119:4-120:14; 120:15-120:20; 120:21-132:1; 133:14-150:14 (See Exhibit 3).
Gorski dep. 125:7-127:10 (See Exhibit 5).
13. The information contained in the excerpts relating to costs is treated by SwedishAmerican as highly confidential and is not shared with anyone other than those individuals at SwedishAmerican who need to know this information in order to perform their jobs. If this information were made public, it could give managed care payors

information that they could use to their advantage in future negotiations with SwedishAmerican and it would provide an unearned competitive advantage to SwedishAmerican's competitors (the Respondents in this matter) and thereby could cause SwedishAmerican serious competitive injury.

Pursuant to 28 U.S.C. § 1746, I declare, under the penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on 9/19/12

Richard A. Walsh

Richard Walsh

Vice President and Chief Operating Officer SwedishAmerican Health System

EXHIBIT 1
(Redacted for Public Version)

EXHIBIT 2
(Redacted for Public Version)

EXHIBIT 3
(Redacted for Public Version)

EXHIBIT 4
(Redacted for Public Version)

EXHIBIT 5
(Redacted for Public Version)

EXHIBIT 6
(Redacted for Public Version)

EXHIBIT 7
(Redacted for Public Version)