

ORIGINAL

PUBLIC

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



_____)
In the Matter of)
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Phoebe Putney Health System, Inc.)
a corporation, and)
)
Phoebe Putney Memorial Hospital, Inc.)
a corporation, and)
)
Phoebe North, Inc.)
a corporation, and)
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HCA Inc.)
a corporation, and)
)
Palmyra Park Hospital, Inc.)
a corporation, and)
)
Hospital Authority of Albany-Dougherty County.)
_____)

DOCKET NO. 9348

**COMPLAINT COUNSEL’S MOTION TO COMPEL PHOEBE PUTNEY TO
PRODUCE DOCUMENTS REQUESTED BY COMPLAINT COUNSEL’S FIRST
REQUEST FOR THE PRODUCTION OF DOCUMENTS**

Complaint Counsel respectfully submits this Motion to Compel Phoebe Putney to Produce Documents Requested by Complaint Counsel’s First Request for the Production of Documents to Phoebe Putney Memorial Hospital, Inc., Phoebe Putney Health Systems, Inc., and Phoebe Putney North, Inc., dated April 5, 2013, pursuant to Rule 3.38(a) of the Federal Trade Commission’s Rules of Adjudicative Practice and Paragraph 9 of the Scheduling Order.

Complaint Counsel has conferred in good faith with counsel for Phoebe Putney in an effort to obtain the requested documents on a timely basis without the Court’s

intervention. Complaint Counsel and Phoebe Putney have been unable to reach an agreement. Therefore, Complaint Counsel respectfully moves the Court for an Order requiring the immediate production of documents and providing additional relief for the reasons set forth in Complaint Counsel's accompanying Memorandum in support of this motion.

Dated: May 13, 2013

Respectfully submitted,

s/ Maria M. DiMoscato

JEFFREY H. PERRY
Assistant Director
SARA Y. RAZI
Deputy Assistant Director
MARIA M. DIMOSCATO
AMANDA G. LEWIS
JOSHUA B. SMITH
STELIOS S. XENAKIS
CHRISTOPHER J. ABBOTT
LUCAS A. BALLETT
DOUGLAS E. LITVACK
JENNIFER K. SCHWAB
MARK SEIDMAN
STEPHEN W. SOCKWELL, JR.
Attorneys
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., N.W.
Washington D.C. 20580
Telephone: (202) 326-2331
Facsimile (202) 326-2286
Email: jperry@ftc.gov

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DOCKET NO. 9348

**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL PRODUCTION OF
DOCUMENTS REQUESTED**

Introduction

Pursuant to Rule 3.38(a) of the Federal Trade Commission's Rules of Adjudicative Practice, Complaint Counsel respectfully moves the Court to compel Phoebe Putney to produce the documents requested by Complaint Counsel's First Request for the Production of Documents, served on April 5, 2013, (the "RFP"). Because "time is of the essence,"¹ Complaint Counsel moves the Court to compel Phoebe Putney to produce the responsive documents immediately.²

Factual Background

Following the Supreme Court's unanimous ruling that state-action immunity does not immunize the Phoebe Putney/Palmyra transaction, the Commission lifted the stay on this administrative proceeding on March 14, 2013.

On March 19, 2013, Phoebe Putney filed a Motion to Reschedule Hearing Date, seeking a new evidentiary hearing start date of "no earlier than December 2013."³ After considering Phoebe Putney's arguments, the Commission denied the motion, but allowed a three-week extension of the hearing date until no later than August 5, 2013.⁴ The Commission stated, "Respondents have been well aware of the expedited discovery requirements necessary in this proceeding for over two years."⁵ And added, "Respondents will have sufficient time to prepare for trial under the terms of this order."⁶

¹ Order Denying Respondent's Motion To Reschedule Hearing Date ("Commission Order") (Apr. 3, 2013) at 2. (Exhibit A).

² Phoebe Putney makes the implausible claim that it is impossible for it to produce documents any faster than it is on track to do. However, the representation that it currently has 40 contract attorneys reviewing documents falls short of its obligation to meet the deadlines set by this Court. See *In re: Fannie Mae Sec. Litig.*, 552 F.3d 814, 822-23 (D.C. Cir. 2009) (affirming imposition of sanctions where delayed hiring of 50 contract attorneys was "too little too late" to meet discovery deadline).

³ Commission Order at 1.

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

On April 4, 2013, the Court entered the Revised Scheduling Order. On the very next day, April 5, 2013, Complaint Counsel served Phoebe Putney with the RFP (Exhibit B). Until today, Phoebe Putney has not produced a single document in response to Complaint Counsel's RFP issued on April 5, 2013.⁷ Pursuant to Rule 3.37(b), Phoebe Putney's response to the RFP was due "no more than 30 days after receiving the request," on May 7, 2013.

Argument

I. **Phoebe Putney Failed to Respond within the Prescribed Time Limits.**

Phoebe Putney's failure to provide any responsive documents by the May 7, 2013 deadline is in direct violation of the Commission's Rules.⁸ The need for strict enforcement of the thirty-day time limit is obvious: Any other result would frustrate the orderly discovery process and the ability of the parties to prepare fully for litigation. Further, failure to enforce the discovery deadlines would reward, rather than punish, noncompliance with the Commission's rules. Strict enforcement of the time limit is particularly appropriate here. Part III proceedings are conducted on a more expeditious schedule than most federal court litigation. As a result, Phoebe Putney's failure to timely produce documents threatens the integrity of Part III proceedings, generally, and, more specifically, the carefully laid out schedule for discovery set forth in the Scheduling Orders here.

Rule 3.37 requires that "[n]o more than 30 days after receiving the request [for the production of documents], the response of the party . . . shall state with respect to each item or

⁷ Phoebe Putney delivered a partial production today that does not include an email sweep or a complete production for any one custodian, despite Complaint Counsel's request that Phoebe Putney prioritize completing production for four of its custodians. As noted in the 3.22(g) Statement, Phoebe Putney also indicated that it may not complete its responsive document production by the close of discovery on May 29, 2013 and may need to seek an extension.

⁸ In addition, Phoebe Putney has asserted the attorney-client privilege, among other privileges, in response to the RFP, but failed to provide a privilege log within the 30-day period as required by Rule 3.38A. As this Court has previously held, "A privilege log is required to be produced on the date set for 'production of' requested material." Hoechst Marion Roussel, Inc., No. 9293, 2000 FTC LEXIS 134, at *3 (Aug. 18, 2000) (citing Rule 3.38A).

category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for the objection shall be stated.” The plain meaning of the rule is clear that a party is required to produce all responsive non-privileged documents no more than 30 days after receiving the request. Nonetheless, because Rule 3.37 tracks – almost word for word – the analogous Federal Rule of Civil Procedure 34 (FRCP 34), it is useful to refer to the case law explicitly setting forth the parameters of the 30-day production deadline for FRCP 34.⁹ As one district court judge recently stated, “Upon service with document production requests, a party has thirty days to respond by written response and production of documents with respect to everything in that party’s possession, custody, and/or control.”¹⁰

Phoebe Putney is not entitled to extend its time for producing documents by merely submitting a narrative “response” that consists of nothing more than a litany of objections and vague representations to produce certain documents at some unknown date. Nor does the subsequent, and admittedly incomplete production of some portion of responsive documents for some custodians satisfy Phoebe Putney’s burden under the rules. According to Rule 3.37(b), to the extent an objection “is made to part of an item or category, the part shall be specified and inspection permitted of the remaining parts.” In other words, although a party may file a hybrid answer that objects to some of the requested production, Phoebe Putney was required to produce all documents in response to any unobjectionable portions of the RFP on May 7. It is clear from Phoebe Putney’s production today – and its own representation that today’s production is not complete – that there are at least some or many unobjectionable parts of the RFP. Although Phoebe Putney subsequently (this afternoon) submitted a partial production of documents, there

⁹ See Statement Issued with the Revision of the Discovery Rules, 43 Fed. Reg. 56863 (Dec. 4, 1978) (“a provision has been added (§ 3.37) for access orders to parties, paralleling in part the analogous provision in Federal Rule 34.”)

¹⁰ Osborn v. Brown, No. 2:12-cv-00775, 2013 U.S. Dist. LEXIS 56799, at *4 (D. Utah Apr. 19, 2013); see also Poulos v. Naas Foods, Inc., 959 F.2d 69, 74 (7th Cir. 1992) (holding that “party waived any objection to production by failing to object 30 days from service when disclosure was due.” (emphasis added)).

is no dispute that Phoebe Putney has not produced a complete response, and no dispute that Phoebe Putney has yet to even indicate when it intends to complete production. Notably, the agreement reached between Complaint Counsel and Phoebe Putney on or about April 30, 2013 significantly narrowed the scope of the RFP, but did not extend this deadline.

II. The Commission Rules Explicitly Authorize Complaint Counsel to Conduct Part III Discovery.

The Commission Rules explicitly authorize Complaint Counsel, in addition to Phoebe Putney, to conduct Part III discovery, separate and distinct from any discovery conducted during the Part II phase of the case. Phoebe Putney's objections that Complaint Counsel's Part III RFP is duplicative or cumulative of the subpoena *duces tecum* issued to Phoebe Putney under the Commission's Part II Rules¹¹ are without merit. As noted by the Supreme Court in Hannah v. Larche, 363 U.S. 420, 446 (1960), there is a clear distinction between Part II, where the Commission seeks to gain information through investigation, and Part III, where the Commission seeks to gain evidence through discovery.¹² Phoebe Putney's position is contrary to the well-settled law that pre-complaint investigation does not preclude Complaint Counsel from conducting discovery pursuant to Part III of the Commission's Rules. Indeed, that is the process that precedes every Part III administrative proceeding. Thus, the fact that Complaint Counsel received some documents during the Part II investigation does not relieve Phoebe Putney of its obligation to comply with the discovery request at issue here.

¹¹ See RFP Objections (General Objections ¶ 1, Responses 1-12, 14-15, 18-19, 21-23). (Exhibit C).

¹² See also In re Hoechst Marion Roussel, Inc., No. 9293, 2000 WL 33596436, at *3 (Oct. 12, 2000).

III. Phoebe Putney's Boilerplate Objections Are Improper.

Phoebe Putney's assertions of boilerplate objections are improper and do not excuse Phoebe Putney from its obligation to respond to Complaint Counsel's discovery requests.¹³ As this Court stated, "Parties resisting discovery of relevant information carry a heavy burden of showing why discovery should be denied."¹⁴

Phoebe Putney has raised a number of general objections to Complaint Counsel's RFP, and has incorporated by reference those general objections as the grounds for its objection to each document request. For example, Phoebe Putney's repeated objections that Complaint Counsel's requests are overly broad and unduly burdensome without reference to particularized facts¹⁵ do not suffice to state proper objections.¹⁶ Similarly, Phoebe Putney's objections asserting that certain terms used in the requests are "vague and ambiguous"¹⁷ are without merit.

IV. Contrary to Phoebe Putney's Assertions, Complaint Counsel Cannot More Easily Obtain The Requested Documents and Information from Other Sources.

Phoebe Putney objects to a number of requests on the basis that Complaint Counsel could obtain the requested documents and information from other sources.¹⁸ Phoebe Putney objects, in particular, to requests that seek information and documents regarding Palmyra prior to Phoebe Putney's management of that facility.¹⁹ First, Phoebe Putney has not supported these objections

¹³ See also McLeod, Alexander, Powel & Apffel, P.C. v. Quarles, 894 F.2d 1482, 1485 (5th Cir. 1990) (citing opinions from Third and Eleventh Circuits in affirming district court's ruling that mere invocation of words "overly broad, burdensome, and oppressive" did not constitute valid objections to discovery requests).

¹⁴ In re Polypore Int'l, 2008 FTC LEXIS 155, at *16.

¹⁵ See RFP Objections (General Objections ¶¶ 2, 11, Responses 2-15, 17-23).

¹⁶ See, e.g., Cappetta v. GC Servs. Ltd., No. 3:08-CV-288, 2008 U.S. Dist. LEXIS 103902, at *3 (E.D. Va. Dec. 24, 2008) ("merely stating that a discovery request is 'overbroad' or 'unduly burdensome' will not suffice to state a proper objection."); Mancia v. Mayflower Textile Servs., 253 F.R.D. 354, 364 (D. Md. 2008) ("[B]oilerplate objections that a request for discovery is 'overbroad and unduly burdensome, and not reasonably calculated to lead to the discovery of material admissible in evidence' . . . are improper unless based on particularized facts.").

¹⁷ RFP Objections (General Objection ¶ 8, Responses 4-5, 9, 11-12, 14-17, 21-22).

¹⁸ See RFP Objections (General Objection ¶ 7, Responses 3-5, 7-10, 14-15, 19-21).

¹⁹ See RFP Objections (Responses 3-5, 7-10, 14-15, 19-21).

with any showing that the requested discovery could be obtained from another source, much less one that is more convenient or less expensive. Notably, some of the requests at issue seek documents relating to the degree of competition between Phoebe Putney and Palmyra prior to the Transaction. Thus, the mere fact itself that Phoebe Putney has such documents in its possession is relevant to the nature and degree of premerger competition. Thus, the requests are highly relevant to Complaint Counsel's allegation that, "Phoebe Putney and Palmyra are each other's closest competitors," among other allegations in the Complaint.²⁰ The fact that others may have similar or partially duplicative information does not excuse Phoebe Putney from providing responsive non-privileged documents in response to these requests. As this Court has observed, "courts have refused to limit subpoenas on grounds that the information can be obtained from another source when the claimed other source may have similar or only partially duplicative information."²¹ In sum, Phoebe Putney has not demonstrated that the requested discovery should be obtained from another source.

V. Requested Relief

Complaint Counsel's proposed relief is tailored to facilitate orderly and timely discovery in this proceeding. Complaint Counsel requests that the Court order Phoebe Putney to make their executives available for their noticed depositions on a mutually agreeable date not later than May 29, 2013 – the close of discovery. Complaint Counsel requests also that the Court order Phoebe Putney to produce all non-privileged responsive documents for each deponent at least five calendar days prior to his or her deposition. Last, Complaint Counsel requests that the Court

²⁰ See, e.g., Compl. ¶ 8.

²¹ In re Union Oil Co. of California, No. 93052003, FTC LEXIS 94, *6; see also Diamond State Ins. Co. v. Rebel Oil Co., 157 F.R.D. 691, 697 (D. Nev. 1994) (refusing to limit subpoena, recognizing that, although party and non-party subpoenas were duplicative in part, the discovery requests were directed toward two separate entities and documents actually maintained in the files of each entity may not be identical).

order Phoebe Putney to produce all remaining responsive non-privileged documents on the earliest date the Court deems proper, and certainly no later than May 29, 2013. To the extent Phoebe Putney produces documents late or on a schedule inconsistent with the Court's order, we request that Complaint Counsel be given an opportunity to conduct additional, out-of-time depositions of Phoebe Putney's representatives and to supplement expert reports, briefs, and other submissions as needed. Any order to compel the production of documents by Phoebe Putney must ensure that the development of a fulsome evidentiary record is not frustrated by Phoebe Putney's noncompliance with the Commission Rules. Further, we respectfully ask this Court to order any and all relief it deems proper.

Conclusion

At this late stage, just three weeks from the close of fact discovery, documents have only begun to be produced even though Complaint Counsel served its RFP upon Phoebe Putney over one month ago. Phoebe Putney must not be permitted to continue to drag its feet at the eleventh hour in an effort to evade both the Commission's ruling that rejected its initial efforts to delay these proceedings and this Court's subsequent Scheduling Order.

Dated: May 13, 2013

Respectfully submitted,

s/ Maria M. DiMoscato

JEFFREY H. PERRY
Assistant Director
SARA Y. RAZI
Deputy Assistant Director
MARIA M. DIMOSCATO
AMANDA G. LEWIS
JOSHUA B. SMITH
STELIOS S. XENAKIS
CHRISTOPHER J. ABBOTT
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DOUGLAS E. LITVACK
JENNIFER K. SCHWAB
MARK SEIDMAN
STEPHEN W. SOCKWELL, JR.
Attorneys
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., N.W.
Washington D.C. 20580
Telephone: (202) 326-2331
Facsimile (202) 326-2286
Email: jperry@ftc.gov

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DOCKET NO. 9348

[PROPOSED] ORDER

Upon consideration of Complaint Counsel’s Motion to Compel Phoebe Putney to Produce Documents Requested by Complaint Counsel’s First Request for the Production of Documents, and any opposition thereto,

IT IS HEREBY ORDERED that Complaint Counsel’s Motion is GRANTED.

IT IS FURTHER ORDERED that Phoebe Putney shall immediately take all necessary steps towards producing to Complaint Counsel all requested documents responsive to Complaint Counsel’s First Request for the Production of Documents issued on April 5, 2013 within _____ days from the issuance of this Order, and no later than five days before each deposition of Phoebe Putney’s representatives.

IT IS FURTHER ORDERED that Phoebe Putney shall immediately take all necessary steps toward making their representatives available for their noticed depositions on dates mutually agreeable to Complaint Counsel and Phoebe Putney not later than May 29, 2013.

IT IS FURTHER ORDERED that Complaint Counsel will be allowed to conduct additional out-of time depositions and to supplement expert reports, briefs, and other submissions as needed in the event Phoebe Putney fails to produce all requested documents within the timeframe prescribed by this Order.

D. Michael Chappell
Administrative Law Judge

DATED this ___ day of May, 2013

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DOCKET NO. 9348

STATEMENT REGARDING MEET AND CONFER
PURSUANT TO 16 C.F.R. § 3.22(g)

Complaint Counsel respectfully submits this Statement, pursuant to Rule 3.22(g) of the Federal Trade Commission’s Rules of Adjudicative Practice and Paragraph 4 of the Scheduling Order.

Complaint Counsel has attempted to confer in good faith with counsel for Phoebe Putney in an effort to obtain the requested documents on a timely basis without the Court’s intervention.

On April 5, 2013, Complaint Counsel issued its First Request for the Production of Documents to Respondents (“RFPs”) Phoebe Putney Memorial Hospital, Inc., Phoebe

Putney Health Systems, Inc., and Phoebe Putney North, Inc. (“Phoebe Putney”). (Exhibit B).

On April 26, 2013, Phoebe Putney’s counsel Jennifer Semko, Lee Van Voorhis, and Katherine Funk called Complaint Counsel Sara Razi and Maggie DiMoscato to begin a negotiation for modifications to the RFPs. The same counsel continued the negotiation in subsequent emails on April 28 to April 30, and May 2, with Complaint Counsel agreeing to modify many of the specifications in the RFPs. (Exhibit D).

On May 7, 2013, Phoebe Putney delivered to Complaint Counsel Respondents’ Objections and Responses to Complaint Counsel’s First Request For Production of Documents (“Response”). (Exhibit C) On the same day, Complaint Counsel Sara Razi requested by emails (one before and one after Complaint Counsel received the Response) to Jennifer Semko, Lee Van Voorhis, and Katherine Funk, a meet and confer call, which Jennifer Semko agreed to schedule for 11:00 A.M. on May 8. (Exhibits D and E).

On May 8, 2013, counsel met and conferred by phone at 11:00 A.M. to discuss the Response and the possibility of Complaint Counsel filing a motion to compel. Jeff Perry, Sara Razi, Maggie Dimoscato, Amanda Lewis, and Josh Smith were present on the call for Complaint Counsel. Jennifer Semko and Brian Burke participated for Phoebe Putney. After a good faith effort during the call to resolve issues raised by the attached Motion to Compel, counsel reached an impasse. Counsel disagreed over whether Phoebe Putney was required to produce any documents by May 7, 2013. Phoebe Putney’s counsel maintained that 16 C.F.R. § 3.37(b) does not require delivery of non-privileged responsive documents within 30 days after being served a request for documents and stated that Phoebe Putney, in fact, may not even complete, despite purportedly best

efforts, the document production by the close of discovery on May 29, 2013. While they projected a production of approximately 21,000 documents on Friday, May 10, 2013, Phoebe Putney acknowledged the production would be incomplete in that it would exclude documents from some custodians and, indeed, would not contain a complete production for even a single custodian. Because Complaint Counsel disagrees with Phoebe Putney's position relating to their obligations under Rule 3.37(b) to provide a timely production, Complaint Counsel stated on the meet and confer call that it would file a motion to compel relating to the RFPs.

Dated: May 13, 2013

Respectfully submitted,

s/ Maria M. DiMoscato

JEFFREY H. PERRY
Assistant Director
SARA Y. RAZI
Deputy Assistant Director
MARIA M. DIMOSCATO
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STELIOS S. XENAKIS
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Attorneys
Federal Trade Commission
Bureau of Competition
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Washington D.C. 20580
Telephone: (202) 326-2331
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DOCKET NO. 9348

DECLARATION OF MARIA M. DIMOSCATO

Pursuant to 28 U.S.C. § 1746, I make the following statement:

1. My name is Maria M. DiMoscato. I am making this statement in the Matter of Phoebe Putney Health System, Inc. et al., FTC Docket No. 9348. All statements in this Declaration are based on my personal knowledge as Attorney for the Federal Trade Commission, Bureau of Competition, or, if so-indicated, on information and belief.
2. Attached as Exhibit A is a true and correct copy of the Commission’s Order Denying Respondent’s Motion to Reschedule Hearing Date, dated April 3, 2013.
3. Attached as Exhibit B is a true and correct copy of Complaint Counsel’s First Request for the Production of Documents Issued to Phoebe Putney Memorial Hospital, Inc., Phoebe Putney Health Systems, Inc., and Phoebe Putney North, Inc., dated April 5, 2013.

4. Attached as Exhibit C is a true and correct copy of Phoebe Respondents' Objections and Response to Complaint Counsel's First Request for Production of Documents, dated May 7, 2013.
5. Attached as Exhibit D is a true and correct copy of an Email chain between Sara Razi, Deputy Assistant Director for the Federal Trade Commission, Bureau of Competition, Mergers IV Division, and Jennifer Semko, Counsel for Phoebe Putney, dated from April 28, 2013 to May 7, 2013.
6. Attached as Exhibit E is a true and correct copy of an Email chain between Sara Razi, Deputy Assistant Director for the Federal Trade Commission, Bureau of Competition, Mergers IV Division, and Jennifer Semko, Counsel for Phoebe Putney, dated May 7, 2013.

Dated: May 13, 2013

Respectfully submitted,

s/ Maria M. DiMoscato

MARIA M. DIMOSCATO
Attorney
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Ave., N.W.
Washington D.C. 20580
Telephone: (202) 326-2315
Facsimile (202) 326-2286
Email: mdimoscato@ftc.gov

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2013 I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580

I also certify that I delivered via electronic mail and hand delivery a copy of the foregoing document to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580

I further certify that I delivered via electronic mail a copy of the foregoing document to:

Lee K. Van Voorhis, Esq.
Katherine I. Funk, Esq.
Teisha C. Johnson, Esq.
Brian Rafkin, Esq.
Jeremy Cline, Esq.
Brian Burke, Esq.
Jennifer Semko, Esq.
John Fedele, Esq.
Baker & McKenzie, LLP
815 Connecticut Avenue, NW
Washington, DC 20006
(202) 835-6162
lee.vanvoorhis@bakermckenzie.com
katherine.funk@bakermckenzie.com
brian.rafkin@bakermckenzie.com
jeremy.cline@bakermckenzie.com
brian.burke@bakermckenzie.com
jennifer.semko@bakermckenzie.com
john.fedele@bakermckenzie.com

*Counsel for Respondent
Phoebe Putney Memorial Hospital, Inc., Phoebe*

Putney Health System, Inc., and Phoebe North, Inc.

Emmet J. Bondurant, Esq.
Frank M. Lowrey, Esq.
Ronan P. Doherty, Esq.
Michael A. Caplan, Esq.
Bondurant, Mixson & Elmore LLP
1201 Peachtree Street, Suite 3900
Atlanta, GA 30309
(404) 881-4126
bondurant@bmelaw.com
lowrey@bmelaw.com
caplan@bmelaw.com

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

Kevin J. Arquit, Esq.
Aimee H. Goldstein, Esq.
Jennifer Rie, Esq.
Jeffrey Coviello, Esq.
Jayma M. Meyer, Esq.
Peter C. Thomas, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
(212) 455-7680
karquit@stblaw.com
agoldstein@stblaw.com
jrie@stblaw.com
jcoviello@stblaw.com
jmeyer@stblaw.com
pthomas@stblaw.com

*Counsel for Respondent
HCA Inc. and Palmyra Park Hospital, Inc.*

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

May 13, 2013

By: s/ Maria DiMoscato
Attorney

EXHIBIT A

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: Edith Ramirez, Chairwoman
 Julie Brill
 Maureen K. Ohlhausen
 Joshua D. Wright

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Docket No. 9348

ORDER DENYING RESPONDENT’S MOTION TO RESCHEDULE HEARING DATE

Our March 14, 2013 Order Granting Complaint Counsel’s Motion to Lift Stay directed the Chief Administrative Law Judge to set a new hearing date in this matter as soon as practicable, but in no circumstances later than July 15, 2013. On March 19, 2013, Respondents filed a Motion to Reschedule Hearing Date, seeking a new evidentiary hearing start date of “no earlier than December 2013.” On March 21, 2013, Complaint Counsel filed an Opposition to Respondents’ Motion to Reschedule Hearing Date. On March 22, 2013, Respondents filed a Motion for Leave to File Reply Brief In Support of Respondents’ Motion to Reschedule Hearing with an attached Reply Brief.

The Commission has carefully considered the arguments in Respondents' motion and Complaint Counsel's opposition. The Commission has also decided to grant Respondents' Motion for Leave to File Reply Brief and has carefully considered the arguments raised therein as well. For the reasons noted below, the Commission denies Respondents' Motion to Reschedule Hearing Date. As a matter of discretion, however, the Commission will grant a three-week extension of the hearing date. The Chief Administrative Law Judge is directed to set a new hearing date as soon as is practicable, but in no circumstances later than August 5, 2013.

Respondents have not made a showing of good cause under Commission Rules 3.21(c) and 3.41(b) to order a later date for the evidentiary hearing in this matter. First, Respondents' have been well aware of the expedited discovery requirements necessary in this proceeding for over two years. As Complaint Counsel point out, Respondents' July 2011 unopposed motion to stay this administrative proceeding explained that both parties agreed to preserve the filing time allotments for each party granted under the 2011 scheduling order upon restart of the administrative trial. (Unopposed Motion To Stay ¶ 10.) The Commission took this agreement into account in granting the stay. (Order Granting Respondents' Unopposed Motion to Stay Proceedings, July 15, 2011.) Respondents do not make any arguments now that were not foreseeable at the time they filed their unopposed motion to stay the administrative proceeding in July 2011.

Second, for the reasons pointed out by Complaint Counsel, Respondents will have sufficient time to prepare effectively for trial under the terms of this order. The July 15, 2013 hearing date identified in the Commission's March 14, 2013 order lifting the stay already effectively extended the discovery time available to the parties from what was allotted in the original 2011 scheduling order. In addition, Respondents have immediate and ongoing access to the vast majority of witnesses on Complaint Counsel's preliminary witness list (most of whom are Respondents' employees), and most of Complaint Counsel's new witnesses will be Respondents' employees and consultants. This reduces the burden of discovery on Respondents. Respondents have also had a copy of Complaint Counsel's initially filed economic expert report since April 20, 2011, giving Respondents almost two years to analyze it and prepare for rebuttal.

Respondents also argue that because this matter no longer deals with an unconsummated merger, the expedited discovery schedule is no longer necessary. We disagree. Complaint Counsel are correct that the Commission's policy favoring expedited administrative proceedings in merger cases recognizes not only the need to protect the merging parties' interests in obtaining swift resolution of a Commission challenge prior to consummation, but also the need to protect interim competition. As we stated in our order lifting the stay, time is of the essence in this matter due to the acquisition's consummation and the significant amount of time that has already since passed.

Respondents state that they would agree to cease any further integration of the two hospitals if the hearing is rescheduled to a later date that provides sufficient time for all parties to prepare. Respondents do not provide any details on what integration efforts would cease, and how doing so would address the alleged interim harm to competition and consumers from the consummation of the transaction that may already be taking place. Consequently, there is no basis for the Commission to act based on Respondents' representation, and thus no reason for the Commission to depart from its policy of conducting adjudicative proceedings expeditiously. *See* 16 C.F.R. § 3.1; *see also id.* § 3.41(b) ("Hearings shall proceed with all reasonable expedition . . .").


Accordingly,

IT IS ORDERED THAT Respondents' Motion To Reschedule Hearing Date be, and it hereby is, **DENIED**;

IT IS FURTHER ORDERED THAT Respondents' Motion For Leave To File Reply Brief be, and it hereby is, **GRANTED**; and

IT IS FURTHER ORDERED THAT the phrase "in no circumstances later than July 15, 2013" in the second Ordering paragraph in the March 14, 2013 Commission Order Granting Complaint Counsel's Motion To Lift Stay is amended to read "in no circumstances later than August 5, 2013."

By the Commission.


Donald S. Clark
Secretary

ISSUED: April 3, 2013.

EXHIBIT B

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

In the Matter of)
)
)
 Phoebe Putney Health System, Inc.)
 a corporation, and)
)
 Phoebe Putney Memorial Hospital, Inc.)
 a corporation, and)
)
 Phoebe North, Inc.)
 a corporation, and)
)
 HCA Inc.)
 a corporation, and)
)
 Palmyra Park Hospital, Inc.)
 a corporation, and)
)
 Hospital Authority of Albany-Dougherty County.)

DOCKET NO. 9348

**COMPLAINT COUNSEL’S FIRST REQUEST FOR
THE PRODUCTION OF DOCUMENTS ISSUED TO
PHOEBE PUTNEY HEALTH SYSTEM, INC., PHOEBE PUTNEY MEMORIAL
HOSPITAL, INC., AND PHOEBE NORTH, INC.**

Pursuant to the Federal Trade Commission’s Rules of Practice, 16 C.F.R. §§ 3.31 and 3.37, and the Scheduling Order entered by Chief Administrative Law Judge Chappell on April 3, 2013, Complaint Counsel hereby requests that Respondents Phoebe Putney Health System, Inc., Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc. (collectively, “Phoebe Putney” or the “Company”) produce all documents and other things responsive to the following requests within their possession, custody, or control.

REQUESTS

In accordance with the Definitions and Instructions below, please produce:

1. One copy of each organization chart and personnel directory in effect since January 1, 2011 for the Company as a whole and for each of the Company’s facilities or divisions involved in any activity relating to any relevant service in the relevant area, and a list of all agents and representatives of the Company,

- including, but not limited to, all attorneys, consultants, investment bankers, product distributors, sales agents, and other persons retained by the Company in any capacity relating to the relevant transaction or any relevant service covered by this Request (excluding those retained solely in connection with environmental, tax, human resources, pensions, benefits, ERISA, or OSHA issues).
2. All documents (including, but not limited to, all final and draft reports, supporting notes, communications, correspondence, data compilations and analysis and recommendations made by the Company or any other agent or representative) relating to (a) consulting studies, research, analyses, recommendations, plans, or other work performed relating to pre- and post-consummation planning and activities, including, but not limited to, transaction planning, community benefits planning, integration, service line consolidation or elimination, cost-savings, clinical benefits, and efficiencies; and (b) any engagement letters relating to work product identified in subpart (a).
 3. All documents relating to the negotiation, execution, or amendment of the December 21, 2010 Asset Purchase Agreement By and Among the Authority, Phoebe Putney Health System, Phoebe North, and Palmyra.
 4. All documents relating to the proposed acquisition of all or substantially all of the assets of Palmyra by Phoebe Putney or the Authority, including, but not limited to, the relevant transaction.
 5. All documents relating to the Management Agreement or lease of Palmyra and/or Phoebe North by the Authority.
 6. All documents relating to the Company's assessment of whether to re-allocate or expand existing facilities or capacity, build new facilities, increase or reduce capacity at Phoebe Putney Memorial Hospital, or purchase Palmyra, including, but not limited to, any identified capacity challenges at Phoebe Putney Memorial Hospital, and the Company's efforts to solve those challenges through means other than the relevant transaction.
 7. All documents relating to the quality of care or service levels at Phoebe Putney Memorial Hospital, Palmyra, or Phoebe North, including, but not limited to, documents relating to quality scorecards, outcome measures, patient surveys, and any other reports relating to quality of care or patient satisfaction, and data or reports submitted to or received by or from quality rating organizations (including, but not limited to, The Leapfrog Group, Society of Thoracic Surgeons, Agency for Healthcare Research and Quality, National Registry of Myocardial Infarction, American Hospital Association, Joint Commission on Accreditation of Healthcare Organizations, and Centers for Medicare and Medicaid Services).

8. All documents relating to the chargemaster or charge description master of Phoebe Putney Memorial Hospital, Palmyra, and Phoebe North in effect at any time since January 1, 2008.
9. All contracts not previously produced to Complaint Counsel in effect at any time since January 1, 2000, with any health plan.
10. All documents not previously produced to Complaint Counsel relating to any contracts or contract negotiations with any health plan for contracts negotiated or in effect at any time since January 1, 2000.
11. All documents relating to studies, analyses, workpapers, supplemental documents, or summaries of hospital prices or reimbursement rates prepared by or on behalf of the Company since January 1, 2005, including, but not limited to, the PricewaterhouseCoopers “Albany-Dougherty County Hospital Authority Lease Analysis” dated May 31, 2005, and the “Procedure Pricing Recommendations” prepared by Cleverley & Associates on behalf of Phoebe Putney, including, but not limited to, any communications between Phoebe Putney and Cleverley & Associates, any documents provided to Cleverley & Associates by Phoebe Putney, the deliverables that accompanied the recommendations, any actions that Phoebe Putney took pursuant to the recommendations, and any recommendations not carried out by Phoebe Putney.
12. All documents relating to competition for any relevant service in the relevant area including, but not limited to, market studies, forecasts and surveys, service area definitions, and competitive assessments.
13. All documents relating to the categorization or definition of hospital or medical services that the Company uses in the ordinary course of business, including any primary, secondary, or other service area(s), the specific boundaries, definition, or contours of each area, and any modifications or changes to the area(s) over the last five (5) years.
14. All documents relating to certificate of need applications considered, filed, or opposed by HCA, Palmyra, Phoebe Putney, or any other hospital in the relevant area since January 1, 2006.
15. All documents relating to the integration of Palmyra into the Company, including, but not limited to:
 - a) Integration of the management and medical staff;
 - b) Any removal or addition of equipment, departments, staff, furnishings, personnel, bed capacity;

- c) Any consolidation, expansion, alteration, reduction, or repositioning of departments, nursing staff, doctors, managers, or services from or to Phoebe North, from or to Phoebe Putney, or from or to any other facility in the Company;
 - d) Hospitalist (doctors or medical professionals employed by the Company) assignments that have been added, changed, or removed from Phoebe North; and
 - e) Any documents relating to transitioning Phoebe North into a women's and children's center or hospital, including, but not limited to, plans, designs, timelines, and funding or progress reports.
16. All patient census reports for Phoebe North and Phoebe Putney Memorial Hospital from January 1, 2011 to present, including breakdowns of services provided in both hospitals.
 17. All documents relating to funding and accounting at Phoebe North including, but not limited to, additional allocations of funding from Phoebe Putney or any other source since the relevant transaction, decreases in funding (including the reasons for such decreases), operations indicator reports, and financial updates.
 18. All documents relating to the acquisition of, or planned acquisition of, doctors or professional groups by the Company.
 19. All documents and communications relating to, or received from, the Authority relating to Palmyra or Phoebe North.
 20. All documents relating to patient wait times within the Emergency Departments at Phoebe Putney Memorial Hospital, Palmyra, and Phoebe North.
 21. All documents relating to patient room conversion (*e.g.*, from semi-private or shared to private) at Phoebe Putney Memorial Hospital, Palmyra, and Phoebe North.
 22. All annual reports, prospectuses, budgets, profit and loss statements, customer or product line profitability reports, cost center reports, charity care reports, and all other financial reports regularly prepared by or for the Company, on a monthly basis and a yearly basis since January 1, 2004.
 23. All documents relating to patient flow data or statistics, patient draw areas, primary or secondary service areas, and competition for patients or physician recruitment from hospitals outside of the relevant area.

DEFINITIONS

- A. The terms “the Company,” “Phoebe Putney,” or “Respondents” means Phoebe Putney Health System, Inc., its domestic and foreign parents, predecessors, divisions, subsidiaries, including Phoebe Putney Memorial Hospital, Inc., Phoebe North, Inc., and Palmyra Health System, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between a legal entity and any other person.
- B. The term “Authority” means the Hospital Authority of Albany-Dougherty County, and any predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all previous and former directors, officers, employees, agents, and representatives of the foregoing.
- C. The term “Palmyra” means HCA/Palmyra, Palmyra Medical Center, and Palmyra Park Hospital, doing business as Palmyra Medical Center, and its directors, officers, employees, agents, and representatives.
- D. The term “HCA” means Hospital Corporation of America, Inc., and its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate,” and “joint venture” refer to any person in which there is partial (25 percent or more) or total ownership or control between a legal entity and any other person.
- E. The terms “Commission” or “FTC” mean the Federal Trade Commission.
- F. The term “documents” means all computer files and written, recorded, and graphic materials of every kind in the possession, custody, or control of the Company. The term “documents” includes, without limitation: electronic mail messages; electronic correspondence and drafts of documents; metadata and other bibliographic or historical data describing or relating to documents created, revised, or distributed on computer systems; copies of documents that are not identical duplicates of the originals in that person’s files; and copies of documents the originals of which are not in the possession, custody, or control of the Company.
1. Unless otherwise specified, the term “documents” excludes (a) bills of lading, invoices, purchase orders, customs declarations, and other similar documents of a purely transactional nature; (b) architectural plans and engineering blueprints; and (c) documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues.
 2. The term “computer files” includes information stored in, or accessible through, computer or other information retrieval systems. Thus, the

Company should produce documents that exist in machine-readable form, including documents stored in personal computers, portable computers, workstations, minicomputers, mainframes, servers, backup disks and tapes, archive disks and tapes, and other forms of offline storage, whether on or off Company premises. If the Company believes that the required search of backup disks and tapes and archive disks and tapes can be narrowed in any way that is consistent with the Complaint Counsel's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Complaint Counsel representative identified on the last page of this request. The Complaint Counsel representative will consider modifying this instruction to:

- (a) exclude the search and production of files from backup disks and tapes and archive disks and tapes unless it appears that files are missing from files that exist in personal computers, portable computers, workstations, minicomputers, mainframes, and servers searched by the Company;
 - (b) limit the portion of backup disks and tapes and archive disks and tapes that needs to be searched and produced to certain key individuals, or certain time periods or certain requests identified by Complaint Counsel representatives; or
 - (c) include other proposals consistent with Complaint Counsel policy and the facts of the case.
- G. The terms “and” and “or” have both conjunctive and disjunctive meanings.
- H. The terms “each,” “any,” and “all” mean “each and every.”
- I. The term “entity” means any natural person, corporation, company, partnership, joint venture, association, joint-stock company, trust, estate of a deceased natural person, foundation, fund, institution, society, union, or club, whether incorporated or not, wherever located and of whatever citizenship, or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his or her capacity as such.
- J. The term “health plan” means any health maintenance organization, preferred provider arrangement or organization, managed health care plan of any kind, self-insured health benefit plan, other employer or union health benefit plan, Medicare, Medicaid, TRICARE, or private or governmental health care plan or insurance of any kind.
- K. The term “hospital” means a facility that provides the relevant service as defined herein.

- L. The term “operate” with reference to a hospital facility means to directly or indirectly own or lease the facility or unit, manage its operations on behalf of another person under a management contract, have the power to appoint the majority of the facility’s governing board or body, or otherwise directly or indirectly control the facility or unit.
- M. The term “person” includes the Respondents and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.
- N. The term “relevant transaction” includes (i) the acquisition of Palmyra pursuant to the Asset Purchase Agreement dated December 21, 2010; (ii) the possible acquisition of Palmyra referred to in paragraphs 29 through 49 of the Declaration of Joel Wernick dated May 16, 2011, and filed in *FTC v. Phoebe Putney Health System, Inc.*, Case No 1:11-cv-00058 (WLS) (M.D. Ga.); and (iii) any other instance in which either the Hospital Authority or Phoebe Putney considered purchasing Palmyra.
- O. The term “provider” means a facility that provides any of the relevant services as defined herein, including, but not limited to, hospitals, physician group practices, or other healthcare facilities.
- P. The term “relating to” means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.
- Q. The term “relevant area” means the area encompassing the counties of Baker, Dougherty, Lee, Mitchell, Terrell, and Worth in the state of Georgia.
- R. The term “relevant service” means inpatient general acute care hospital services (*e.g.*, the provision of hospital care for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities, excluding the treatment of mental illness or substance abuse, or long-term services such as skilled nursing care), collectively and individually.

INSTRUCTIONS

- A. All references to year refer to calendar year. Unless otherwise specified, each of the requests calls for documents and/or information for each of the years from January 1, 2008 to the present. Where information is requested, provide it separately for each year. Where yearly data is not yet available, provide data for the calendar year to date. If calendar year information is not available, supply the Company’s fiscal year data indicating the twelve-month period covered, and provide the Company’s best estimate of calendar year data.
- B. This request for documents shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this

- request produced or obtained by the Respondents up to forty-five (45) calendar days prior to the date of the Company's full compliance with this request.
- C. The Company need not produce documents that were already produced to the Commission in response to the Subpoena *Duces Tecum*, issued to Phoebe Putney by the Commission on or about February 14, 2011, FTC File No. 111-0067.
- D. To protect patient privacy, the Respondents shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this request, PII means an individual's Social Security Number alone; or an individual's name or address or phone number in combination with one or more of the following: date of birth, Social Security Number, driver's license number or other state identification number or a foreign country equivalent, passport number, financial account numbers, credit or debit card numbers. For purposes of this request, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Respondents shall substitute for the masked information a unique patient identifier that is different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient. Otherwise, the Respondents shall redact the PII or SHI but are not required to replace it with an alternate identifier.
- E. Forms of Production: the Respondents shall submit documents as instructed below absent written consent signed by Complaint Counsel.
- (1) Documents stored in electronic or hard copy format in the ordinary course of business shall be submitted in electronic format provided that such copies are true, correct, and complete copies of the original documents:
 - (a) Submit Microsoft Access, Excel, and PowerPoint in native format with extracted text and metadata;
 - (b) Submit all other documents other than those identified in subpart (1)(a) in image format with extracted text and metadata; and
 - (c) Submit all hard copy documents in image format accompanied by OCR.
 - (2) For each document submitted in electronic format, include the following metadata fields and information:
 - (a) For 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 path file name, and MD5 or SHA Hash value;
- (b) For emails: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, to, from, CC, BCC, subject, date and time sent, Outlook Message ID (if applicable), child records (the beginning Bates or document identification number of attachments delimited by a semicolon);
 - (c) For email attachments: beginning Bates or document identification number, ending Bates or document identification number, page count, custodian, creation date and time, modification date and time, last accessed date and time, size, location or path file name, parent record (beginning Bates or document identification number of parent email), and MD5 or SHA Hash value; and
 - (d) For hard copy documents: beginning Bates or document identification number, ending Bates or document identification number, page count, and custodian.
- (3) If the Respondents intend to utilize any de-duplication or email threading software or services when collecting or reviewing information that is stored in the Company's computer systems or electronic storage media in response to this request, or if the Company's computer systems contain or utilize such software, the Respondents must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Respondents may use such software or services when producing materials in response to this request.
- (4) Submit electronic files and images as follows:
- (a) For productions over 10 gigabytes, use IDE and EIDE hard disk drives, formatted in Microsoft Windows-compatible, uncompressed data in USB 2.0 external enclosure;
 - (b) For productions under 10 gigabytes, CD-R CD-ROM and DVD-ROM for Windows-compatible personal computers, and USB 2.0 Flash Drives are also acceptable storage formats; and
 - (c) All documents produced in electronic format shall be scanned for and free of viruses. Complaint Counsel will return any infected media for replacement, which may affect the timing of the Company's compliance with this request.

- (5) All documents responsive to this request, regardless of format or form and regardless of whether submitted in hard copy or electronic format:
- (a) Shall be produced in complete form, un-redacted unless privileged, and in the order in which they appear in the Company's files and shall not be shuffled or otherwise rearranged. For example:
 - i. If in their original condition hard copy documents were stapled, clipped or otherwise fastened together or maintained in file folders, binders, covers or containers, they shall be produced in such form, and any documents that must be removed from their original folders, binders, covers or containers in order to be produced shall be identified in a manner so as to clearly specify the folder, binder, cover or container from which such documents came; and
 - ii. If in their original condition electronic documents were maintained in folders or otherwise organized, they shall be produced in such form and information shall be produced so as to clearly specify the folder or organization format;
 - (b) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;
 - (c) Shall be produced in color where necessary to interpret the document (if the coloring of any document communicates any substantive information, or if black-and-white photocopying or conversion to TIFF format of any document (*e.g.*, a chart or graph), makes any substantive information contained in the document unintelligible, the Respondents must submit the original document, a like-colored photocopy, or a JPEG format image);
 - (d) Shall be marked on each page with corporate identification and consecutive document control numbers;
 - (e) Shall be accompanied by an affidavit of an officer of each Respondent stating that the copies are true, correct and complete copies of the original documents; and
 - (f) Shall be accompanied by an index that identifies: (i) the name of each person from whom responsive documents are submitted; and (ii) the corresponding consecutive document control number(s) used to identify that person's documents, and if submitted in paper form, the box number containing such documents. If the index exists as a computer file(s), provide the index both as a printed

hard copy and in machine-readable form (provided that Complaint Counsel representatives determine prior to submission that the machine-readable form would be in a format that allows the agency to use the computer files). The Complaint Counsel representative will provide a sample index upon request.

- F. If any documents are withheld from production based on a claim of privilege, the Respondents shall provide, pursuant to 16 C.F.R. § 3.38A, a schedule which describes the nature of documents, communications, or tangible things not produced or disclosed, in a manner that will enable Complaint Counsel to assess the claim of privilege.
- G. If documents responsive to a particular specification no longer exist for reasons other than the ordinary course of business or the implementation of the Company's document retention policy but the Respondents have reason to believe have been in existence, state the circumstances under which they were lost or destroyed, describe the documents to the fullest extent possible, state the specification(s) to which they are responsive, and identify persons having knowledge of the content of such documents.
- H. Any questions you have relating to the scope or meaning of anything in this request or suggestions for possible modifications thereto should be directed to Christopher J. Abbott at (202) 326-2685. The response to the request shall be addressed to the attention of Christopher J. Abbott, Federal Trade Commission, 601 New Jersey Avenue, N.W., Washington, D.C. 20001, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission.

CERTIFICATE OF SERVICE

This is to certify that on April 5, 2013, I delivered via electronic mail a copy of the foregoing document to:

Lee K. Van Voorhis, Esq.
Katherine I. Funk, Esq.
Teisha C. Johnson, Esq.
Baker & McKenzie, LLP
815 Connecticut Avenue, NW
Washington, DC 20006
(202) 835-6162
lee.vanvoorhis@bakermckenzie.com

James C. Egan, Esq.
Jonathan L. Sickler, Esq.
Weil, Gotshal & Manges LLP
1300 Eye Street, NW, Suite 900
Washington, DC 20005
(202) 682-7036
jim.egan@weil.com

Counsel for Respondents
Phoebe Putney Memorial Hospital, Inc., Phoebe
Putney Health System, Inc., and Phoebe North, Inc.

Emmet J. Bondurant, Esq.
Frank M. Lowrey, Esq.
Ronan P. Doherty, Esq.
Michael A. Caplan, Esq.
Bondurant, Mixson & Elmore LLP
1201 Peachtree Street, Suite 3900
Atlanta, GA 30309
(404) 881-4126
bondurant@bmelaw.com

Counsel for Respondent
Hospital Authority of Albany-Dougherty County

Kevin J. Arquit, Esq.
Aimee H. Goldstein, Esq.
Jennifer Rie, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
(212) 455-7680

karquit@stblaw.com

*Counsel for Respondent
HCA Inc. and Palmyra Park Hospital, Inc.*

April 5, 2013

By: s/ Maria DiMoscato
Maria DiMoscato
Attorney

CERTIFICATE OF SERVICE

This is to certify that on April 5, 2013, I delivered via electronic mail a copy of the foregoing document to:

Lee K. Van Voorhis, Esq.
Katherine I. Funk, Esq.
Teisha C. Johnson, Esq.
Brian Rafkin, Esq.
Jeremy Cline, Esq.
Baker & McKenzie, LLP
815 Connecticut Avenue, NW
Washington, DC 20006
(202) 835-6162
lee.vanvoorhis@bakermckenzie.com

Counsel for Respondent
Phoebe Putney Memorial Hospital, Inc., Phoebe
Putney Health System, Inc., and Phoebe North, Inc.

Emmet J. Bondurant, Esq.
Frank M. Lowrey, Esq.
Ronan P. Doherty, Esq.
Michael A. Caplan, Esq.
Bondurant, Mixson & Elmore LLP
1201 Peachtree Street, Suite 3900
Atlanta, GA 30309
(404) 881-4126
bondurant@bmelaw.com

Counsel for Respondent
Hospital Authority of Albany-Dougherty County

Kevin J. Arquit, Esq.
Aimee H. Goldstein, Esq.
Jennifer Rie, Esq.
Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017-3954
(212) 455-7680
karquit@stblaw.com

Counsel for Respondent
HCA Inc. and Palmyra Park Hospital, Inc.

April 5, 2013

By: s/ Maria DiMoscato
Maria DiMoscato
Attorney

CERTIFICATION

Pursuant to 28 U.S.C. § 1746, I hereby certify under penalty of perjury that this response to the Requests for Production of Documents has been prepared by me or under my personal supervision from records of Phoebe Putney Health System, Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc. and is complete and correct to the best of my knowledge and belief.

Where copies rather than original documents have been submitted, the copies are true, correct, and complete copies of the original documents. If Complaint Counsel uses such copies in any court or administrative proceeding, Phoebe Putney Health System, Phoebe Putney Memorial Hospital, Inc., and Phoebe North, Inc., will not object based upon Complaint Counsel not offering the original document.

(Signature of Official)

(Title/Company)

(Typed Name of Above Official)

(Office Telephone)

EXHIBIT C

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

In the Matter of)
Phoebe Putney Health System, Inc.)
a corporation, and)
)
Phoebe Putney Memorial Hospital, Inc.)
a corporation, and)
)
Phoebe North, Inc.)
a corporation, and)
)
HCA Inc.)
a corporation, and)
)
Palmyra Park Hospital, Inc.)
a corporation, and)
)
Hospital Authority of Albany-Dougherty County.)
)
_____)

DOCKET NO. 9348

**PHOEBE RESPONDENTS’ OBJECTIONS AND RESPONSES TO
COMPLAINT COUNSEL’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule of Practice 3.37(b), 16 C.F.R. § 3.37(b), Respondents Phoebe Putney Memorial Hospital, Inc. and Phoebe Putney Health System, Inc. (“Respondents”) respond and object to Complaint Counsel’s First Request for The Production of Documents (“Requests”) as set forth below. The following responses are made solely for the purposes of this action. Each response is subject to all objections as to relevance, materiality, and admissibility, and to any and all objections on any ground that would require exclusion of any response or document if it were introduced in court.

No incidental or implied admissions are intended by these responses. The fact that Respondents have objected or responded to any Request shall not be deemed an admission that

Respondents accept or admit the existence of any facts set forth or assumed by such Request or that such objection or response constitutes admissible evidence. The fact that Respondents have responded to part or all of any Request is not intended to and shall not be construed to be a waiver by Respondents of any part of any objection to any Request.

These objections are made on the basis of information and documents currently available to and located by Respondents upon reasonable investigation. Respondents expressly reserve the right to modify, revise, supplement, or amend their responses as they deem appropriate.

GENERAL OBJECTIONS

Respondents do not accede or submit to the instructions and definitions accompanying Complaint Counsel's Requests. The following general objections apply to the Requests, and to each individual Request therein, and shall have the same force and effect as if fully set forth in each Response below. Where specific objections are noted in each response, the general objections are not waived.

1. Respondents object to the Requests to the extent that they are unnecessarily and improperly duplicative of the requests contained in the *subpoena duces tecum* issued by Complaint Counsel to Respondents on or about February 14, 2011 (the "Subpoena").

2. Respondents object to each Request to the extent that it is overly broad, oppressive and would impose undue burden and expense upon Respondents.

3. Respondents object to the Requests, including the definitions and instructions included therein, to the extent they attempt to impose requirements or obligations upon Respondents that are inconsistent with, or in addition to, those imposed by the Rules of Practice, the Scheduling Order, or any applicable law or statute.

4. Respondents object to the Requests to the extent that they seek information that is protected from disclosure by the attorney-client privilege, the work-product doctrine or any other applicable privilege, protection, restriction, or immunity from discovery. Any inadvertent disclosure of privileged information shall not constitute a waiver of any applicable privilege or protection.

5. Respondents object to the Requests to the extent that they require Respondents to search for and produce documents that is not within their possession, custody, or control.

6. Respondents object to the Requests insofar as any particular Request would require Respondents to extend their reasonable investigation to third parties.

7. Respondents object to the Requests to the extent they seek documents that cannot be located by Respondents after reasonably diligent inquiry, are readily available from public sources, are equally available to Complaint Counsel, are already in Complaint Counsel's possession, or are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive.

8. Respondents object to the Requests to the extent they are argumentative, prejudicial, improper, incorrect, vague, and/or ambiguous.

9. Respondents object to the Definitions to the extent that certain Definitions imply legal conclusions. For example, by responding to or using the definitions "relevant area" or "relevant service," Respondents are not admitting that the defined "relevant area" constitutes a relevant geographic market or that the defined "relevant service" constitutes a relevant product market.

10. Respondents object to the Requests to the extent that any Request seeks to discover information that is neither relevant nor reasonably calculated to lead to the discovery of admissible evidence.

11. Respondents object to the definition of the term “the Company” to the extent it includes affiliates, facilities, employees, representatives, and other entities and persons whose information is neither relevant to these proceedings nor reasonably calculated to lead to the discovery of admissible evidence. For the same reason, Respondents object to these Requests as overly broad and unduly burdensome.

12. All documents produced are subject to the terms of the Protective Order entered in this action.

13. Respondents’ document production will provide documents currently available to, and located by, Respondents. Respondents will continue their investigation of the facts and events underlying this action and, as a result, may discover additional documents or information in the course of further investigation, discovery and trial preparation. Furthermore, although Respondents have made a diligent search and reasonable inquiry to locate responsive documents, Respondents reserve the right to amend or supplement their production if and when they have discovered other or additional documents or information, and to use such information in pretrial proceedings or at trial.

SPECIFIC OBJECTIONS AND RESPONSES

REQUEST 1:

One copy of each organization chart and personnel directory in effect since January 1, 2011 for the Company as a whole and for each of the Company’s facilities or divisions involved in any activity relating to any relevant service in the relevant area, and a list of all agents and representatives of the Company, including, but not limited to, all attorneys, consultants, investment bankers, product distributors, sales agents, and other persons retained by the Company in any capacity relating to the relevant transaction or any relevant service covered by

this Request (excluding those retained solely in connection with environmental, tax, human resources, pensions, benefits, ERISA, or OSHA issues).

RESPONSE: Respondents object to the extent that the subject matter of the request—specifically, the request to create a “list of all agents and representatives”—is not the proper subject of a request for the production of documents. Neither the Rules of Practice, the Scheduling Order, nor other applicable law requires the creation of new documents in response to a document request. Respondents further object to the term “relevant area” to the extent that it implies a legal conclusion that the “relevant area” constitutes a relevant geographic market. Respondents also object to the term “relevant service” to the extent that it implies a legal conclusion that the “relevant service” constitutes a relevant product market. Respondents further object to this Request as unnecessarily and improperly cumulative of Subpoena request number 1. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents (to the extent such documents already exist and can be found after search and investigation) in accordance with the agreement reached with Complaint Counsel on or about April 30, 2013 (“Production Agreement”) to narrow Respondents’ document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 2:

All documents (including, but not limited to, all final and draft reports, supporting notes, communications, correspondence, data compilations and analysis and recommendations made by the Company, or any other agent or representative) relating to (a) consulting studies, research, analyses, recommendations, plans, or other work performed relating to pre- and post-consummation planning and activities, including, but not limited to, transaction planning, community benefits planning, integration, service line consolidation or elimination, cost-savings, clinical benefits, and efficiencies; and (b) any engagement letters relating to work product identified in subpart (a).

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request number 17. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents further object to the term “other work” as vague and unduly broad. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents’ document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 3:

All documents relating to the negotiation, execution, or amendment of December 21, 2010 Asset Purchase Agreement By and Among the Authority, Phoebe Putney Health System, Phoebe North, and Palmyra.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request number 21. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents’ management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-

privileged documents in accordance with the Production Agreement to narrow Respondents' document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 4:

All documents relating to the proposed acquisition of all or substantially all of the assets of Palmyra by Phoebe Putney or the Authority, including, but not limited to, the relevant transaction.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request numbers 18 - 21. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena requests. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents' management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents' document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 5:

All documents relating to the Management Agreement or lease of Palmyra and/or Phoebe North by the Authority.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request numbers 15, 16 and 21. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena requests. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Respondents object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents’ management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents’ document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 6:

All documents relating to the Company’s assessment of whether to re-allocate or expand existing facilities or capacity, build new facilities, increase or reduce capacity at Phoebe Putney Memorial Hospital, or purchase Palmyra, including, but not limited to, any identified capacity challenges at Phoebe Putney Memorial Hospital, and the Company’s efforts to solve those challenges through means other than the relevant transaction.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request number 12. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents further object to the definition of the term “the Company” to the extent it includes affiliates,

facilities, employees, representatives, and other entities and persons whose information is neither relevant to these proceedings nor reasonably calculated to lead to the discovery of admissible evidence. For the same reason, this Request is overly broad and unduly burdensome.

Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Respondents also object to the terms “re-allocate,” “new,” and “capacity challenges” as vague and unclear. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents’ document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 7:

All documents relating to the quality of care or service levels at Phoebe Putney Memorial Hospital, Palmyra, or Phoebe North, including, but not limited to, documents relating to quality scorecards, outcome measures, patient surveys, and any other reports relating to quality of care or patient satisfaction, and data or reports submitted to or received by or from quality rating organizations (including, but not limited to, The Leapfrog Group, Society of Thoracic Surgeons, Agency for Healthcare Research and Quality, National Registry of Myocardial Infarction, American Hospital Association, Joint Commission on Accreditation of Healthcare Organizations, and Centers for Medicare and Medicaid Services).

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request number 4. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome.

Respondents object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. Respondents also object to the extent the Request seeks documents “submitted to or received by” quality rating organizations, without designating by whom such data/reports were sent or received. To the extent the Request seeks

documents created or controlled by Palmyra prior to Respondents' management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents' document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 8:

All documents relating to the chargemaster or charge description master of Phoebe Putney Memorial Hospital, Palmyra, and Phoebe North in effect at any time since January 1, 2008.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request number 8. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome.

Respondents object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents' management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient,

more appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents' document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 9:

All contracts not previously produced to Complaint Counsel in effect at any time since January 1, 2000, with any health plan.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request number 9. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents further object to the extent the Request seeks "all contracts" with any health plan without designating with which relevant entity said contracts were entered. Respondents also object to the extent this Request could be interpreted to apply to all contracts entered into by "the Company," the definition of which includes affiliates, facilities, employees, representatives, and other entities and persons whose information is neither relevant to these proceedings nor reasonably calculated to lead to the discovery of admissible evidence. For the same reason, this Request is overly broad and unduly burdensome. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents' management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Subject to and without waiving these

objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents' document production to those documents created (i) during the 2000 – 2003 date range not previously encompassed by the Subpoena and (ii) after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 10:

All documents not previously produced to Complaint Counsel relating to any contracts or contract negotiations with any health plan for contracts negotiated or in effect at any time since January 1, 2000.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request number 9. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents further object to the extent the Request seeks documents related to “any contracts or contract negotiations” with any health plan without designating with which relevant entity said contracts were entered or negotiated. Respondents also object to the extent this Request could be interpreted to apply to all contracts entered or negotiated by “the Company,” the definition of which includes affiliates, facilities, employees, representatives, and other entities and persons whose information is neither relevant to these proceedings nor reasonably calculated to lead to the discovery of admissible evidence. For the same reason, this Request is overly broad and unduly burdensome. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents' management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more

appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents' document production to those documents created (i) during the 2000 – 2003 date range not previously encompassed by the Subpoena and (ii) after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 11:

All documents relating to studies, analyses, workpapers, supplemental documents, or summaries of hospital prices or reimbursement rates prepared by or on behalf of the Company since January 1, 2005, including, but not limited to, the PricewaterhouseCoopers "Albany-Dougherty County Hospital Authority Lease Analysis" dated May 31, 2005, and the "Procedure Pricing Recommendations" prepared by Cleverley & Associates on behalf of Phoebe Putney, including, but not limited to, any communications between Phoebe Putney and Cleverley & Associates, any documents provided to Cleverley & Associates by Phoebe Putney, the deliverables that accompanied the recommendations, any actions that Phoebe Putney took pursuant to the recommendations, and any recommendations not carried out by Phoebe Putney.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request numbers 3, 6, 7, 8, and 17. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena requests. Respondents also object to the request for "[a]ll" documents as overly broad and unduly burdensome. Respondents object to this Request to the extent it seeks information that is protected from disclosure by the attorney-client privilege, the work-product doctrine or any other applicable privilege, protection, restriction, or immunity from discovery. Respondents object to the definition of the term "the Company" to the extent it includes affiliates, facilities, employees, representatives, and other entities and persons whose information is neither relevant to these proceedings nor reasonably calculated to lead to the discovery of admissible evidence. For the same reason, this Request is overly broad and unduly burdensome. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in

accordance with the Production Agreement to narrow Respondents' document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 12:

All documents relating to competition for any relevant service in the relevant area including, but not limited to, market studies, forecasts and surveys, service area definitions, and competitive assessments.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request numbers 6, 7, 11 and 20. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena requests.

Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents' document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 13:

All documents relating to the categorization or definition of hospital or medical services that the Company uses in the ordinary course of business, including any primary, secondary, or other service area(s), the specific boundaries, definition, or contours of each area, and any modifications or changes to the area(s) over the last five (5) years.

RESPONSE: Respondents object to this Request as vague and unclear. Request Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Respondents object to the definition of the term “the Company” to the extent it includes affiliates, facilities, employees, representatives, and other entities and persons whose information is neither relevant to these proceedings nor reasonably calculated to lead to the discovery of admissible evidence. For the same reason, this Request is overly broad and unduly

burdensome. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents, to the extent that any such documents are identified after search and investigation.

REQUEST 14:

All documents relating to certificate of need applications considered, filed, or opposed by HCA, Palmyra, Phoebe Putney, or any other hospital in the relevant area since January 1, 2006.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request number 5. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents’ management of that facility, or by “any other hospital,” Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Respondents further object to the term “relevant area” to the extent that it implies a legal conclusion that the “relevant area” constitutes a relevant geographic market. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents, to the extent that any such documents are identified after search and investigation.

REQUEST 15:

All documents relating to the integration of Palmyra into the Company, including, but not limited to:

- a) Integration of the management and medical staff;

- b) Any removal or addition of equipment, departments, staff, furnishings, personnel, bed capacity;
- c) Any consolidation, expansion, alteration, reduction, or repositioning of departments, nursing staff, doctors, managers, or services from or to Phoebe North, from or to Phoebe Putney, or from or to any other facility in the Company;
- d) Hospitalist (doctors or medical professionals employed by the Company) assignments that have been added, changed, or removed from Phoebe North; and
- e) Any documents relating to transitioning Phoebe North into a women's and children's center or hospital, including, but not limited to, plans, designs, timelines, and funding or progress reports.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request numbers 12, 20 and 21. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena requests. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Respondents further object to the terms “alteration” and “repositioning” as vague and unclear. Respondents object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents’ management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents’ document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 16:

All patient census reports for Phoebe North and Phoebe Putney Memorial Hospital from January 1, 2011 to present, including breakdowns of services provided in both hospitals.

RESPONSE: Respondents will produce responsive, non-privileged documents, to the extent that any such documents are identified after search and investigation.

REQUEST 17:

All documents relating to funding and accounting at Phoebe North including, but not limited to, additional allocations of funding from Phoebe Putney or any other source since the relevant transaction, decreases in funding (including the reasons for such decreases), operations indicator reports, and financial updates.

RESPONSE: Respondents object to this Request as overly broad and unduly burdensome, particularly to the extent it seeks “[a]ll” documents relating to “funding” and “accounting.” Respondents object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents, to the extent that any such documents are identified after search and investigation.

REQUEST 18:

All documents relating to the acquisition of, or planned acquisition of, doctors or professional groups by the Company.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request number 10. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Respondents object to the definition of the term “the Company” to the extent it includes affiliates, facilities, employees, representatives, and other entities and persons whose information is neither relevant to these proceedings nor reasonably calculated to lead to the discovery of admissible evidence. For the same reason, this Request is overly broad and unduly burdensome.

Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents, to the extent that any such documents are identified after search and investigation.

REQUEST 19:

All documents and communications relating to, or received from, the Authority relating to Palmyra or Phoebe North.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request numbers 15, 16 and 18. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena requests. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Respondents object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents’ management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents’ document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 20:

All documents relating to patient wait times within the Emergency Departments at Phoebe Putney Memorial Hospital, Palmyra and Phoebe North.

RESPONSE: Respondents object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents’ management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents, to the extent that any such documents are identified after search and investigation.

REQUEST 21:

All documents relating to patient room conversion (*e.g.*, from semi-private or shared to private) at Phoebe Putney Memorial Hospital, Palmyra, and Phoebe North.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request numbers 12 and 21. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena request. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Respondents object to the term “Phoebe North” to the extent that it is intended to designate Phoebe North, Inc., which does not currently exist. To the extent the Request seeks documents created or controlled by Palmyra prior to Respondents’ management of that facility, Respondents object to the Request: (i) as requiring Respondents to search for and produce documents that are not within their possession, custody, or control; (ii) as requiring Respondents to extend their

reasonable investigation to third parties; and (iii) on grounds that the requested documents are available to Complaint Counsel from another source or by other means that are more convenient, more appropriate, less burdensome, or less expensive. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents' document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 22:

All annual reports, prospectuses, budgets, profit and loss statements, customer or product line profitability reports, cost center reports, charity care reports, and all other financial reports regularly prepared by or for the Company, on a monthly basis and a yearly basis since January 1, 2004.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request numbers 2 and 3. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena requests. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome.

Respondents object to the definition of the term “the Company” to the extent it includes affiliates, facilities, employees, representatives, and other entities and persons whose information is neither relevant to these proceedings nor reasonably calculated to lead to the discovery of admissible evidence. For the same reason, this Request is overly broad and unduly burdensome. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents' document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

REQUEST 23:

All documents relating to patient flow data or statistics, patient draw areas, primary or secondary service areas, and competition for patients or physician recruitment from hospitals outside of the relevant area.

RESPONSE: Respondents object to this Request as unnecessarily and improperly cumulative of Subpoena request numbers 3 and 6. Respondents incorporate herein any and all objections previously raised with respect to the referenced Subpoena requests. Respondents also object to the request for “[a]ll” documents as overly broad and unduly burdensome. Subject to and without waiving these objections, Respondents will produce responsive, non-privileged documents in accordance with the Production Agreement to narrow Respondents’ document production to those documents created after the collection of documents from certain Phoebe custodians in 2011, and to the extent that any such documents are identified after search and investigation.

Dated: May 7, 2013

Respectfully submitted,

/s/ Katherine I. Funk

Lee K. Van Voorhis, Esq.

Katherine I. Funk, Esq.

Baker & McKenzie LLP

815 Connecticut Avenue, NW

Washington, DC 20006

*Counsel For Phoebe Putney Memorial
Hospital, Inc. and Phoebe Putney Health
System, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that this 7th day of May, 2013, I delivered via electronic mail a copy of the foregoing document to:

Christopher Abbott
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
cabbott@ftc.gov

I also certify that I delivered via electronic mail a copy of the foregoing document to:

Edward D. Hassi, Esq.
Trial Counsel
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
ehassi@ftc.gov

Jeff K. Perry, Esq.
Assistant Director
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
jperry@ftc.gov

Maria M. DiMoscato, Esq.
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
mdimoscato@ftc.gov

Sara Y. Razi, Esq.
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
srazi@ftc.gov

Christopher Abbott
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
cabbott@ftc.gov

Lucas Ballet
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
lballet@ftc.gov

Amanda Lewis
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
alewis1@ftc.gov

Douglas Litvack
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
dlitvack@ftc.gov

Mark Seidman
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
mseidman@ftc.gov

Joshua Smith
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
jsmith3@ftc.gov

Stelios Xenakis
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
sxenakis@ftc.gov

Emmet J. Bondurant, Esq.
Bondurant@bmelaw.com
Michael A. Caplan, Esq.
caplan@bmelaw.com
Ronan A. Doherty, Esq.
doherty@bmelaw.com
Frank M. Lowrey, Esq.
lowrey@bmelaw.com
Bondurant, Mixson & Elmore, LLP
1201 West Peachtree St. N.W., Suite 3900
Atlanta, GA 30309

Jennifer Schwab
Federal Trade Commission
Bureau of Competition
600 Pennsylvania Avenue, NW
Washington, DC 20580
jschwab@ftc.gov

Kevin J. Arquit, Esq.
karquit@stblaw.com
Peter Thomas, Esq.
pthomas@stblaw.com
Aimee Goldstein, Esq.
agoldstein@stblaw.com
Jeff Coviello, Esq.
jcoviello@stblaw.com
Jennifer Rie, Esq.
jrie@stblaw.com
Jayma Meyer
jmeyer@stblaw.com
Simpson Thacher and Bartlett, LLP
425 Lexington Avenue
New York, New York 10017

This 7th day of May, 2013.

/s/ Jeremy W. Cline
Jeremy W. Cline, Esq.
*Counsel for Phoebe Putney Memorial
Hospital, Inc. and Phoebe Putney Health
System, Inc.*

**CONFIDENTIAL EXHIBIT
REDACTED IN ENTIRETY**

EXHIBIT D

**CONFIDENTIAL EXHIBIT
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EXHIBIT E