

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



**In the Matter of**

**Cabell Huntington Hospital Inc.  
A corporation;**

**and**

**Pallottine Health Services Inc.  
A corporation;**

**and**

**St. Mary's Medical Center Inc.  
A corporation**

**Docket No. 9366**

**REVISED ANSWER AND RESPONSES OF RESPONDENTS  
PALLOTTINE HEALTH SERVICES INC. AND  
ST. MARY'S MEDICAL CENTER INC.**

Pursuant to Rule 3.12 of the Federal Trade Commission's (the "Commission's") Rules of Practice for Adjudicative Proceedings, Respondents Pallottine Health Services, Inc. ("PHS") and St. Mary's Medical Center, Inc. ("St. Mary's"), by and through their attorneys, admit, deny and aver as follows with respect to the Administrative Complaint ("Complaint") filed by the Commission:

PHS and St. Mary's lack knowledge of and exclude for purposes of their answer, any information contained in or related to highly confidential information or documents provided by Cabell Huntington Hospital, Inc. ("Cabell") in connection with the FTC's investigation of the proposed transaction between Cabell, PHS, and St. Mary's that was disclosed only to counsel. To the extent not specifically admitted in the following paragraphs, the allegations in the Complaint are denied.

**I. NATURE OF THE CASE**

1. PHS and St. Mary's deny the allegations set forth in paragraph 1 of the Complaint.

2. PHS and St. Mary's admit that Cabell and St. Mary's are general acute care hospitals and are located approximately three miles apart in Huntington, West Virginia. PHS and St. Mary's admit that Cabell and St. Mary's both provide inpatient and outpatient services. PHS and St. Mary's aver that St. Mary's competes with multiple healthcare providers on an array of services, including but not limited to Cabell, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. PHS and St. Mary's deny the remaining allegations set forth in paragraph 2 of the Complaint.

3. PHS and St. Mary's aver that the FTC's selective quotation of unidentified written material or communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's practices and communications set forth in paragraph 3 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 3 of the Complaint.

4. PHS and St. Mary's aver that St. Mary's competes with multiple healthcare providers on an array of services, including but not limited to Cabell, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. PHS and St. Mary's deny the remaining allegations set forth in paragraph 4 of the Complaint.

5. PHS and St. Mary's aver that St. Mary's competes with multiple healthcare providers on an array of services, including but not limited to Cabell, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. PHS and St. Mary's admit that St. Mary's entered into a physician-hospital organization ("PHO") with other regional hospitals. PHS and St. Mary's deny the remaining allegations set forth in paragraph 5 of the Complaint.

6. PHS and St. Mary's deny the allegations set forth in paragraph 6 of the Complaint.

7. The allegations contained in the third sentence of paragraph 7 constitute conclusions of law to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny the allegations in that sentence. PHS and St. Mary's deny the remaining allegations set forth in paragraph 7 of the Complaint.

8. PHS and St. Mary's admit that King's Daughters is located in Kentucky. PHS and St. Mary's aver that St. Mary's competes with multiple healthcare providers on an array of services, including but not limited to Cabell, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. PHS and St. Mary's further aver that the FTC's selective quotation of unidentified written material or communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's

respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's deny the remaining allegations set forth in paragraph 8 of the Complaint.

9. PHS and St. Mary's aver that the West Virginia Health Care Authority (the "WVHCA") regulates acute care hospital rates through rate review to protect the health and well-being of citizens of the state by guarding against unreasonable loss of economic resources and to ensure citizens' access to cost-effective, high-quality healthcare services. PHS and St. Mary's admit that the WVHCA utilizes a cost-based review system. PHS and St. Mary's deny the remaining allegations set forth in paragraph 9 of the Complaint.

10. PHS and St. Mary's aver that on July 30, 2015, Cabell and St. Mary's entered into an Assurance of Voluntary Compliance ("AVC") with the Attorney General of West Virginia to remedy any purported risk of competitive harm from the Transaction. PHS and St. Mary's further aver that on November 4, 2015, Cabell and St. Mary's executed a revised AVC with the West Virginia Attorney General in order to clarify the original provisions and expand upon the commitments made by the Parties that prevent any enhancement of any market power post-transaction. PHS and St. Mary's further aver that Cabell entered into a Letter of Agreement ("LOA") with [REDACTED]. PHS and St. Mary's also aver that paragraph 10 contains legal conclusions to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny those allegations and all other remaining allegations set forth in paragraph 10 of the Complaint.

11. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the entry or expansion of other providers in the Huntington area. PHS and St. Mary's deny the remaining allegations set forth in paragraph 11 of the Complaint.

12. PHS and St. Mary's deny the allegations set forth in paragraph 12 of the Complaint.

13. PHS and St. Mary's aver that the allegations set forth in the first sentence of paragraph 13 in the Complaint include legal conclusions to which no response is required. To the extent a response is deemed required, PHS and St. Mary's admit that, at present, they understand that a Certificate of Need from WVHCA and approval from the Catholic Church are required, and deny all other remaining allegations set forth in paragraph 13 of the Complaint.

## **II. BACKGROUND**

### **A. Jurisdiction and Venue**

14. PHS and St. Mary's aver that the allegations set forth in paragraph 14 of the Complaint constitute legal conclusions to which no response is required.

15. PHS and St. Mary's aver that the allegations set forth in paragraph 15 of the Complaint constitute legal conclusions to which no response is required.

## B. Respondents

16. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the revenues of Cabell in the fiscal year ending September 30, 2014 set forth in paragraph 16 of the Complaint, and therefore deny those allegations. Upon information and belief, PHS and St. Mary's admit all other remaining allegations set forth in Paragraph 16 of the Complaint.

17. Upon information and belief, PHS and St. Mary's admit the allegations set forth in paragraph 17 of the Complaint.

18. PHS and St. Mary's deny that PHS owns St. Joseph's Hospital in Buckhannon, West Virginia. PHS and St. Mary's admit all other remaining allegations set forth in paragraph 18 of the Complaint.

19. PHS and St. Mary's admit the allegations set forth in Paragraph 19 of the Complaint.

20. PHS and St. Mary's deny the allegations set forth in the first sentence of paragraph 20 of the Complaint and aver that St. Mary's subsidiary, St. Mary's Medical Management, employs the part-time executive director of Three Gables Surgery Center pursuant to a management contract and that St. Mary's has a [REDACTED] ownership interest in Three Gables Surgery Center in Proctorville, Ohio. PHS and St. Mary's admit the allegations set forth in the second sentence of paragraph 20 of the Complaint. PHS and St. Mary's deny the allegations set forth in the third sentence of paragraph 20 of the Complaint and aver that St. Mary's subsidiary, St. Mary's Medical Management, employs approximately [REDACTED] physicians. PHS and St. Mary's admit the allegations set forth in the fourth sentence of paragraph 20 of the Complaint.

## C. The Proposed Acquisition

21. PHS and St. Mary's admit the allegations set forth in paragraph 21 of the Complaint.

22. PHS and St. Mary's admit the allegations set forth in paragraph 22 of the Complaint.

23. PHS and St. Mary's admit the allegations set forth in paragraph 23 of the Complaint.

24. PHS and St. Mary's admit the allegations set forth in paragraph 24 of the Complaint.

25. PHS and St. Mary's aver that the allegations set forth in the first sentence in paragraph 25 of the Complaint are legal conclusions to which no response is required. PHS and St. Mary's deny that the WVHCA has continued the CON hearing for an indefinite period and aver that this hearing will take place on December 21-22, 2015. PHS and St. Mary's admit the allegations set forth in the second sentence of paragraph 25 of the Complaint.

26. PHS and St. Mary's aver that the allegations set forth in the first sentence in paragraph 26 of the Complaint are legal conclusions for which no response is required. PHS and St. Mary's admit the allegations set forth in the second sentence of paragraph 26 of the Complaint.

### **III. THE RELEVANT SERVICE MARKET**

27. The allegations contained in paragraph 27 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny those allegations and all other remaining allegations set forth in paragraph 27 of the Complaint.

28. The allegations contained in paragraph 28 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny the allegations set forth in paragraph 28 of the Complaint.

29. The allegations contained in paragraph 29 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny those allegations and all other remaining allegations set forth in paragraph 29 of the Complaint.

30. The allegations contained in paragraph 30 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny the allegations set forth in paragraph 30 of the Complaint.

### **IV. THE RELEVANT GEOGRAPHIC MARKETS**

31. The FTC's allegation of the relevant geographic market constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny that allegation. PHS and St. Mary's deny all other allegations in paragraph 31 of the Complaint.

32. The FTC's allegation constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny that allegation.

33. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 33 of the Complaint, and therefore deny them.

34. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 34 of the Complaint, and therefore deny them.

35. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 35 of the Complaint regarding how other hospitals "regard themselves," and therefore deny that allegation. PHS and St. Mary's deny all remaining allegations in paragraph 35 of the Complaint.

36. PHS and St. Mary's aver that health plans have expressed enthusiastic support for the Acquisition and have indicated that they do not believe it will produce higher rates. PHS and

St. Mary's further aver that the Acquisition will not result in higher rates for patients, and that patients will continue to have affordable access to quality healthcare services. PHS and St. Mary's deny all remaining allegations in paragraph 36 of the Complaint.

## **V. MARKET STRUCTURE AND THE ACQUISITION'S PRESUMPTIVE ILLEGALITY**

37. PHS and St. Mary's deny the allegations in paragraph 37 of the Complaint.

38. PHS and St. Mary's deny the allegations in paragraph 38 of the Complaint.

39. The allegations contained in paragraph 39 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny those allegations.

40. PHS and St. Mary's deny that the HHIs alleged in paragraph 40 reflect the HHIs for the properly defined relevant service markets, and deny all other remaining allegations set forth in paragraph 40 of the Complaint.

41. PHS and St. Mary's deny the allegations set forth in paragraph 41 of the Complaint.

42. PHS and St. Mary's admit that St. Mary's provides outpatient surgical services. PHS and St. Mary's aver that St. Mary's subsidiary, St. Mary's Medical Management, employs the part-time executive director of Three Gables pursuant to a management contract and has a [REDACTED] ownership interest in Three Gables Surgery Center in Proctorville, Ohio. PHS and St. Mary's deny the remaining allegations set forth in paragraph 42 of the Complaint.

43. The allegations contained in paragraph 43 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny those allegations and all other remaining allegations set forth in paragraph 43 of the Complaint.

## **VI. ANTICOMPETITIVE EFFECTS**

### **A. Hospital Competition Yields Lower Prices and Higher Quality<sup>1</sup>**

44. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the generic allegations set forth in paragraph 44 of the Complaint, and therefore deny those allegations.

45. PHS and St. Mary's admit that hospitals negotiate provider contracts with health plans. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the

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<sup>1</sup> PHS and St. Mary's repeat the section headers contained in the Complaint solely for ease of reference. These section headers are not independent factual allegations; however, to the extent a response to these section headers is deemed required, PHS and St. Mary's deny any allegations made in the section headers.

remaining generic allegations set forth in paragraph 45 of the Complaint, and therefore deny those allegations.

46. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the generic allegations included in paragraph 46 of the Complaint, and therefore deny those allegations.

47. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the generic allegations set forth in paragraph 47 of the Complaint, and therefore deny those allegations.

48. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the generic allegation set forth in paragraph 48 of the Complaint, and therefore deny those allegations.

49. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the generic allegation set forth in paragraph 49 of the Complaint, and therefore deny those allegations.

50. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the generic allegation set forth in paragraph 50 of the Complaint, and therefore deny those allegations.

51. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the generic allegation set forth in paragraph 51 of the Complaint, and therefore deny those allegations.

52. PHS and St. Mary's admit that the WVHCA performs rate review in an effort to constrain the rising cost of healthcare and to assure reasonable access to necessary and quality health services for its citizens. PHS and St. Mary's deny all other remaining allegations set forth in paragraph 52 of the Complaint.

53. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 53 of the Complaint, and therefore deny those allegations.

54. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 54 of the Complaint, and therefore deny those allegations.

55. PHS and St. Mary's aver that the WVHCA limits the percent of increase a hospital may implement each year to its chagemaster. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations regarding Cabell's negotiated reimbursement rate with health plans set forth in paragraph 55 of the Complaint, and therefore deny those allegations. PHS and St. Mary's aver that the mission of the WVHCA is, in part, to assure reasonable access to necessary and quality health services for its citizens. PHS and St. Mary's deny all remaining allegations set forth in paragraph 55 of the Complaint.

## **B. The Acquisition Would Eliminate Price Competition**

56. PHS and St. Mary's aver that St. Mary's competes with multiple healthcare providers on an array of services, including but not limited to Cabell, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations regarding how Cabell and St. Mary's are perceived in "the eyes of" health plans set forth in paragraph 56 of the Complaint, and therefore deny those allegations. PHS and St. Mary's deny the remaining allegations set forth in paragraph 56 of the Complaint.

57. PHS and St. Mary's deny the allegations set forth in paragraph 57 of the Complaint.

58. PHS and St. Mary's aver that St. Mary's competes with multiple healthcare providers on an array of services, including but not limited to Cabell, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's practices and communications set forth in paragraph 58 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 58 of the Complaint.

59. PHS and St. Mary's aver that St. Mary's competes with multiple healthcare providers on an array of services, including but not limited to Cabell, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's negotiation with health plans set forth in paragraph 59 of the Complaint, and therefore deny them. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's deny the remaining allegations set forth in paragraph 59 of the Complaint.

60. PHS and St. Mary's aver that St. Mary's competes with multiple healthcare providers on an array of services, including but not limited to Cabell, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to an unidentified health plan's negotiations of contracts with hospitals set forth in paragraph 60 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 60 of the Complaint.



61. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's negotiation with [REDACTED] set forth in paragraph 61 of the Complaint, and therefore deny them.

62. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's negotiation with [REDACTED] set forth in paragraph 62 of the Complaint, and therefore deny them.

63. PHS and St. Mary's deny the allegations set forth in paragraph 63 of the Complaint.

64. PHS and St. Mary's aver that health plans have actively encouraged the Acquisition. PHS and St. Mary's deny the remaining allegations set forth in paragraph 64 of the Complaint.

65. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to allegations set forth in paragraph 65 of the Complaint, and therefore deny those allegations.

66. PHS and St. Mary's aver that health plans have actively encouraged the Acquisition. PHS and St. Mary's denies the allegations in the first two sentences of paragraph 66. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to remaining allegations set forth in paragraph 66 of the Complaint, and therefore deny those allegations.

67. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's practices and communications set forth in paragraph 67 of the Complaint, and therefore deny them. PHS and St. Mary's deny the allegations set forth in paragraph 67 of the Complaint.

68. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to allegations set forth in paragraph 68 of the Complaint, and therefore deny those allegations.

69. PHS and St. Mary's deny the allegations set forth in paragraph 69 of the Complaint.

70. PHS and St. Mary's admit that St. Mary's entered into a PHO named Tri-State Health Partners, Inc. ("Tri-State") with other partners including Cabell. PHS and St. Mary's deny the remaining allegations set forth in paragraph 70 of the Complaint.

71. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to allegations set forth in the last two sentences of paragraph 71 of the Complaint, and therefore deny those allegations. PHS and St. Mary's deny the remaining allegations set forth in paragraph 71 of the Complaint.

72. PHS and St. Mary's admit that St. Mary's has contracts with multiple health plans including, but not limited to, [REDACTED]. PHS and St. Mary's aver that contracts with health plans often include provisions which allow for unilateral termination of the contract by the health plan. PHS and St. Mary's deny the remaining allegations set forth in paragraph 72 of the Complaint.

73. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's deny the remaining allegations set forth in paragraph 73 of the Complaint.

74. PHS and St. Mary's admit that St. Mary's utilizes billboards in its marketing strategy. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's use of billboards set forth in paragraph 74 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 74 of the Complaint.

75. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's deny the remaining allegations set forth in paragraph 75 of the Complaint.

76. PHS and St. Mary's deny the allegations set forth in paragraph 76 of the Complaint.

### **C. The Acquisition Would Eliminate Quality and Service Competition**

77. PHS and St. Mary's aver that St. Mary's competes with multiple healthcare providers on an array of services, including but not limited to Cabell, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's deny the remaining allegations set forth in paragraph 77 of the Complaint.

78. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified documents and testimony, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's deny the allegations set forth in paragraph 78 of the Complaint.

79. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly

referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's practices and communications set forth in paragraph 79 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 79 of the Complaint.

80. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's practices and communications set forth in paragraph 80 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 80 of the Complaint.

81. PHS and St. Mary's aver that the FTC's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and PHS and St. Mary's respectfully refer the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's practices and communications set forth in paragraph 81 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 81 of the Complaint.

82. PHS and St. Mary's admit that St. Mary's utilizes da Vinci robots in its provision of surgical services. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's practices as set forth in the second and third sentences of paragraph 82 of the Complaint, and therefore deny them. PHS and St. Mary's further admit that da Vinci robots allow for less invasive surgeries. PHS and St. Mary's deny the allegations set forth in paragraph 82 of the Complaint.

83. PHS and St. Mary's aver that St. Mary's has a strong cardiac program. PHS and St. Mary's aver that Cabell received a CON for PCI services. PHS and St. Mary's admit that St. Mary's opposed Cabell's CON application to offer PCI services. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's practices set forth in paragraph 83 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 83 of the Complaint.

84. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations related to Cabell's practices and communications set forth in paragraph 84 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 84 of the Complaint.

85. PHS and St. Mary's deny the allegations set forth in paragraph 85 of the Complaint.

**D. Temporary Conduct Remedies Would Not Prevent Competitive Harm or Replicate Market Competition**

86. PHS and St. Mary's aver that the AVCs with the West Virginia Attorney General are documents that speak for themselves. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to allegations related to Cabell's LOA with [REDACTED] set forth in paragraph 86 of the Complaint, and therefore deny them. Further, PHS and St. Mary's aver that the Acquisition will benefit consumers and these documents will guarantee these benefits. PHS and St. Mary's deny the remaining allegations set forth in paragraph 86 of the Complaint.

87. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to allegations related to Cabell's LOA with [REDACTED] set forth in paragraph 87 of the Complaint, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 87 of the Complaint.

88. PHS and St. Mary's aver that the AVCs with the West Virginia Attorney General are documents that speak for themselves. Further, PHS and St. Mary's aver that these documents were executed to prevent any purported harm to consumers. PHS and St. Mary's deny the remaining allegations set forth in paragraph 88 of the Complaint.

89. PHS and St. Mary's aver that the allegations contained in paragraph 89 constitute conclusions of law to which no response is required. PHS and St. Mary's further respond that the Massachusetts court decision speaks for itself, and deny the allegations of paragraph 89 inconsistent therewith. To the extent a response is deemed required, PHS and St. Mary's deny the allegations.

90. PHS and St. Mary's deny the allegations set forth in paragraph 90 of the Complaint.

91. PHS and St. Mary's deny the allegations set forth in paragraph 91 of the Complaint.

92. PHS and St. Mary's aver that the AVCs are documents that speaks for themselves. PHS and St. Mary's deny the allegations set forth in paragraph 92 of the Complaint.

93. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to allegations related to Cabell's LOA with [REDACTED] set forth in paragraph 93 of the Complaint, and therefore deny them. PHS and St. Mary's aver that the AVCs are documents that speak for themselves. PHS and St. Mary's deny the remaining allegations set forth in paragraph 93 of the Complaint.

94. PHS and St. Mary's deny the allegations set forth in paragraph 94 of the Complaint.

**VII. ENTRY BARRIERS**

95. PHS and St. Mary's deny the allegations set forth in paragraph 95 of the Complaint.

96. PHS and St. Mary's aver that the first sentence in paragraph 96 of the Complaint contains legal conclusions to which no response is required. PHS and St. Mary's aver that the cost to construct and operate a new hospital is dependent on numerous factors, and lack knowledge or information sufficient to form a belief as to the FTC's allegations regarding the cost to construct and operate a new hospital, and therefore deny that allegation. PHS and St. Mary's deny the remaining allegations set forth in paragraph 96 of the Complaint.

97. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 97 of the Complaint, and therefore deny them.

98. PHS and St. Mary's aver that West Virginia's CON regulations are documents that speak for themselves. To the extent that the Complaint implies West Virginia is unlikely to approve entry of another hospital, PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the accuracy of this speculation, and therefore deny it. PHS and St. Mary's deny the remaining allegations set forth in paragraph 98 of the Complaint.

99. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations regarding an unidentified physician group's CON application set forth in paragraph 99 of the Complaint, and therefore deny them. PHS and St. Mary's admit that the WVHCA denied Cabell's application to provide fixed open-bore MRI services. PHS and St. Mary's deny that St. Mary's offered fixed open-bore MRI services. PHS and St. Mary's aver that St. Mary's opposed Cabell's CON application to provide fixed open-bore MRI services despite solely offering wide-bore MRI services, which is an example of how competition between Cabell and St. Mary's diminished the quality of care offered to patients in the geographic service area of both hospitals. PHS and St. Mary's deny the remaining allegations set forth in paragraph 99 of the Complaint.

100. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 100 of the Complaint, and therefore deny them.

101. PHS and St. Mary's aver that the first sentence in paragraph 101 contains legal conclusions to which no response is required. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to whether an unspecified outpatient surgical services provider will open an outpatient surgery center, and therefore deny those allegations. PHS and St. Mary's aver that the cost to open an outpatient surgery center is dependent on numerous factors, and lack knowledge or information sufficient to form a belief as to the FTC's allegations related to the cost to construct an outpatient surgery center, and therefore deny those allegations. PHS and St. Mary's lack information or knowledge sufficient to form a belief as to the time and cost to open Three Gables Surgery Center, and therefore deny those allegations. PHS and St. Mary's admit that West Virginia's CON laws apply to outpatient facilities and services. PHS and St. Mary's deny the remaining allegations set forth in paragraph 101 of the Complaint.

## **VIII. EFFICIENCIES**

102. PHS and St. Mary's deny the allegations set forth in paragraph 102 of the Complaint.

103. PHS and St. Mary's aver that Cabell has significant evidence demonstrating the efficiencies which could result from the Acquisition. PHS and St. Mary's deny the remaining allegations set forth in paragraph 103 of the Complaint.

104. PHS and St. Mary's lack knowledge or information sufficient to form a belief as to the FTC's allegations regarding potential savings from the acquisition of St. Mary's by an unidentified purchaser, and therefore deny them. PHS and St. Mary's deny the remaining allegations set forth in paragraph 104 of the Complaint.

105. PHS and St. Mary's deny the allegations set forth in paragraph 105 of the Complaint.

106. PHS and St. Mary's aver that Cabell and St. Mary's have significant evidence demonstrating the quality enhancement opportunities which could result from the Acquisition. PHS and St. Mary's deny the remaining allegations set forth in paragraph 106 of the Complaint.

## **IX. VIOLATION**

### **COUNT I - ILLEGAL AGREEMENT**

107. Except where specifically admitted above, the allegations contained in paragraphs 1 through 106 of the Complaint are denied.

108. PHS and St. Mary's aver that the allegations contained in paragraph 108 constitute conclusions of law to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny the allegations.

### **COUNT II - ILLEGAL ACQUISITION**

109. Except where specifically admitted above, the allegations contained in Paragraphs 1 through 106 of the Complaint are denied.

110. PHS and St. Mary's aver that the allegations contained in paragraph 110 constitute conclusions of law to which no response is required. To the extent a response is deemed required, PHS and St. Mary's deny the allegations.

## **AFFIRMATIVE AND OTHER DEFENSES**

PHS and St. Mary's assert the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the FTC:

### **FIRST DEFENSE**

The FTC's Complaint fails to state a claim upon which relief can be granted.

### **SECOND DEFENSE**

Granting the relief sought is contrary to the public interest.

**THIRD DEFENSE**

The alleged relevant geographic market definitions fail as a matter of law.

**FOURTH DEFENSE**

The Complaint fails adequately to allege a relevant service market.

**FIFTH DEFENSE**

The Complaint fails to allege harm to competition.

**SIXTH DEFENSE**

The Complaint fails to allege harm to any consumers.

**SEVENTH DEFENSE**

The Complaint fails to allege harm to consumer welfare.

**EIGHTH DEFENSE**

The alleged harm to potential competition is not actionable.

**NINTH DEFENSE**

The combination of the Respondents' business will be procompetitive. The merger will result in substantial merger-specific efficiencies, cost synergies, quality of care improvements, and other procompetitive effects that will directly benefit consumers. These benefits greatly outweigh any and all proffered anticompetitive effects.

**TENTH DEFENSE**

The FTC fails to allege a time frame for the alleged anticompetitive effects.

**ELEVENTH DEFENSE**

The Acquisition is immune from federal antitrust authority under the state action doctrine.

**TWELFTH DEFENSE**

This administrative proceeding is invalid because the appointment of the Administrative Law Judge ("ALJ") is unconstitutional under the Appointments Clause.

**RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES**

Neither PHS nor St. Mary's have knowingly or intentionally waived any applicable defenses, and PHS and St. Mary's reserve the right to assert and rely upon other applicable

defenses that may become available or apparent throughout the course of the action. PHS and St. Mary's reserve the right to amend, or seek to amend, their answer or affirmative defenses.

**NOTICE OF CONTEMPLATED RELIEF**

WHEREFORE, PHS and ST. MARY'S request that the Commission enter judgment in its favor as follows:

- A. The Complaint be dismissed without prejudice;
- B. None of the Complaint's contemplated relief issues to the FTC;
- C. Costs incurred in defending this action be awarded to RESPONDENTS; and
- D. Any and all other relief as the Commission may deem just and proper.



Dated: **November 27 2015**

Respectfully submitted,

/s/ H. Holden Brooks

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 27, 2015, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to the following:

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

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

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

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*Counsel for Respondent Cabell Huntington 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.

November 27, 2015

By: s/H. Holden Brooks