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UNITED STATES OF AMERICA

BEFORE THE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Joseph J. Simons, Chairman**
Noah Joshua Phillips
Rohit Chopra
Rebecca Kelly Slaughter
Christine S. Wilson

In the Matter of

One Rock Capital Partners II, LP,
a limited partnership,

FXI Holdings, Inc.
a corporation,

and

Bain Capital Fund XI, LP
a limited partnership,

and

Innocor, Inc.
a corporation.

DOCKET NO. C-4708

COMPLAINT

Pursuant to the Clayton Act and the Federal Trade Commission Act ("FTC Act"), and by virtue of the authority vested in it by said Acts, the Federal Trade Commission ("Commission"), having reason to believe that Respondent FXI Holdings, Inc. (FXI), an indirect subsidiary of Respondent One Rock Capital Partners II, LP (One Rock) and Respondent Innocor, Inc. (Innocor), an indirect subsidiary of Respondent Bain Capital Fund XI, LP (Bain) (each a "Respondent" or collectively "Respondents"), have agreed to an acquisition, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its Complaint, stating its charges as follows:

I. RESPONDENTS

1. Respondent One Rock Capital Partners II, LP is a limited partnership organized, existing, and doing business under and by virtue of the laws of Delaware, with its executive offices and principal place of business located at 30 Rockefeller Plaza, 54th Floor, New York, NY 10112.

2. Respondent FXI Holdings, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its executive offices and principal place of business located at 100 Matsonford Road, 5 Radnor Corporate Center, Suite 300, Radnor, PA 19087-4560.

3. Respondent Bain Capital Fund XI, LP is a limited partnership organized, existing, and doing business under and by virtue of the laws of the Cayman Islands, with its executive offices and principal place of business located at 200 Clarendon Street, Boston, MA 02116.

4. Respondent Innocor, Inc. is a corporation, existing, organized, and doing business under and by virtue of the laws of New Jersey, with its executive offices and principal place of business located at 200 Schulz Drive, Red Bank, NJ 07701.

II. JURISDICTION

5. Respondents FXI and Innocor, and each of their relevant operating subsidiaries and parent entities, are, and at all times relevant herein have been, engaged in commerce, or in activities affecting commerce, within the meaning of Section 1 of the Clayton Act, 15 U.S.C. § 12, and Section 4 of the FTC Act, 15 U.S.C. § 44.

III. THE PROPOSED MERGER

6. Pursuant to an Agreement and Plan of Merger (the "Merger Agreement") dated March 4, 2019, FXI and Innocor have agreed to a merger (the "Merger") in which One Rock and Bain will own 74% and 26% of the combined firm, respectively.

IV. THE RELEVANT PRODUCT MARKET

7. The relevant line of commerce in which to analyze the effects of the Merger is the sale of Low-Density Conventional Polyurethane Foam used in Home Furnishings ("Low-Density Foam"). Low-Density Foam, commonly referred to as "light and white" foam, is used as padding or cushioning in a variety of home furnishing products including mattresses, mattress toppers, pet beds, pillows, chairs, and couches. Customers do not have viable substitutes for Low-Density Foam.

V. THE RELEVANT GEOGRAPHIC MARKETS

8. Regional geographic markets are appropriate here. Low-Density Foam is bulky to ship because it contains a significant amount of air, and freight costs can be expensive relative to the value of the product. Three relevant geographic markets—the Pacific Northwest, Midwest States, and Mississippi—are appropriate to analyze the probable effects of the Merger. The Pacific Northwest geographic market includes the states of Oregon and Washington and the Midwest States geographic market includes the states of Indiana, Michigan, and Ohio.

VI. MARKET STRUCTURE

9. FXI and Innocor are two of only five major suppliers of Low-Density Foam in the United States.

10. In the Pacific Northwest, FXI and Innocor are the only suppliers of Low-Density Foam.

11. In the Midwest States, FXI and Innocor are two of the three major suppliers of Low-Density Foam.

12. In Mississippi, FXI and Innocor are two of the four major suppliers of Low-Density Foam.

13. In each of the relevant markets, the Merger would result in highly concentrated markets and a significant increase in concentration under the standards set forth in the 2010 U.S. Department of Justice and Federal Trade Commission Horizontal Merger Guidelines and the relevant case law, and, therefore, the Merger is presumptively unlawful.

VII. ENTRY CONDITIONS

14. Entry into the relevant markets described in Paragraphs 7 and 8 would not be timely, likely, or sufficient in magnitude, character, and scope to deter or counteract the expected anticompetitive effects of the Merger.

VIII. EFFECTS OF THE MERGER

15. The effects of the Merger, if consummated, may be to substantially lessen competition in the relevant lines of commerce, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45, in the following ways:

a. by increasing the likelihood of coordination and parallel accommodating conduct among the remaining competitors in the relevant market; and

b. by eliminating direct and substantial competition between FXI and Innocor.

IX. VIOLATIONS CHARGED

16. The allegations contained in Paragraphs 1 through 15 above are hereby incorporated by reference as though fully set forth here.

17. The Merger described in Paragraph 6, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

18. The Merger described in Paragraph 6, if consummated, would constitute a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

19. The Merger Agreement described in Paragraph 6 constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this twenty-first day of February, 2020, issues its complaint against said Respondents.

By the Commission.

April J. Tabor
Acting Secretary

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