

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

Thomas Jefferson University,
a corporation;

and

Albert Einstein Healthcare Network,
a corporation.

Docket No. 9392

ANSWER OF RESPONDENT ALBERT EINSTEIN HEALTHCARE NETWORK

Albert Einstein Healthcare Network (“Einstein”), by and through its undersigned counsel, Hogan Lovells US LLP, hereby answers the Federal Trade Commission’s (“Commission”) Complaint. To the extent not specifically admitted in the following paragraphs, the allegations in the Complaint are denied.

GENERAL RESPONSE TO THE COMMISSION’S ALLEGATIONS

Einstein denies the allegations and legal conclusions contained in the FTC’s unnumbered introductory paragraph. Einstein further states that the merger between Thomas Jefferson University (“Jefferson”) and Einstein is procompetitive, will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects—all of which will directly benefit consumers—and will provide much needed financial support for Einstein’s healthcare facilities, which serve patients in some of the most vulnerable areas of the greater Philadelphia region.

1. Einstein admits that it provides inpatient general acute care (“GAC”) hospital services and inpatient rehabilitation services, among other services, in Philadelphia and Montgomery Counties. Einstein denies the remaining allegations contained in the first sentence of Paragraph 1 of the Complaint. Einstein admits that Jefferson and Einstein entered into a System Integration Agreement dated September 14, 2018 and states that the content of that agreement speaks for itself. Einstein denies the allegations contained in the last sentence of Paragraph 1 of the Complaint.

2. Einstein admits the allegations contained in the first sentence of Paragraph 2 of the Complaint. Einstein admits that Einstein and Jefferson contract with commercial insurers and provide inpatient GAC hospital services to those insurers’ members. Einstein denies the remaining allegations contained in Paragraph 2 of the Complaint.

3. Einstein denies the allegations contained in the first, second, third, and fourth sentences of Paragraph 3 of the Complaint. The allegations contained in the last sentence of Paragraph 3 state legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

4. Einstein denies the allegations contained in the first sentence of Paragraph 4 of the Complaint. Einstein admits that the second, third, and fourth sentences of Paragraph 4 reference internal Einstein documents. However, Einstein denies the Commission’s characterization of these documents, which take selected language out of context. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the last sentence of Paragraph 4, and therefore denies the same.

5. Einstein denies the allegations contained in Paragraph 5 of the Complaint.

6. The first and second sentences of Paragraph 6 contain legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations. Einstein denies the remaining allegations contained in Paragraph 6 of the Complaint.

7. Einstein admits that it operates a nationally renowned inpatient rehabilitation facility (“IRF”) that provides inpatient rehabilitation services under the name “MossRehab” at a main campus in Elkins Park and at units within four GAC hospital facilities. Einstein admits that Jefferson operates some IRFs in Pennsylvania. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 7, and therefore denies the same.

8. Einstein admits that MossRehab provides rehabilitation care for patients treated at GAC hospitals for various conditions. To the extent the allegations contained in the second sentence of Paragraph 8 refer to admission criteria from the Centers for Medicare & Medicaid Services (“CMS”) and commercial payers, Einstein admits that such admission criteria exist and states that the content of those criteria speak for themselves. The allegations contained in the third sentence of Paragraph 8 contain legal conclusions as to which no response is required. To the extent a response is required, Einstein denies the allegations. Einstein denies the allegations contained in the last sentence of Paragraph 8 of the Complaint.

9. Einstein denies the allegations contained in the first sentence of Paragraph 9 of the Complaint. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the second and third sentences of Paragraph 9, and therefore denies the same. Einstein admits that the last sentence of Paragraph 9 refers to an

internal Einstein document. However, Einstein denies the Commission's characterization of the statement referenced in Paragraph 9 of the Complaint.

10. Einstein denies the allegations contained in Paragraph 10 of the Complaint.

11. Einstein denies the allegations contained in Paragraph 11 of the Complaint.

12. Einstein admits that Einstein and Jefferson seek to contract with commercial insurers that offer plans to employers and their employees, among others, within the greater Philadelphia region. Einstein denies the remaining allegations contained in Paragraph 12 of the Complaint.

13. Einstein denies the allegations contained in Paragraph 13 of the Complaint.

14. Einstein denies the allegations contained in Paragraph 14 of the Complaint.

15. Einstein denies the allegations contained in Paragraph 15 of the Complaint.

16. Einstein denies the allegations contained in Paragraph 16 of the Complaint.

17. Einstein denies the allegations contained in Paragraph 17 of the Complaint.

18. The allegations in Paragraph 18 of the Complaint contain legal conclusions, as to which no response is required. To the extent a response is required, Einstein denies the allegations.

19. The allegations contained in Paragraph 19 of the Complaint contain legal conclusions, as to which no response is required. To the extent a response is required, Einstein denies the allegations.

20. Einstein admits that Jefferson operates a not-for-profit academic health system in Pennsylvania. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 20 of the Complaint, and therefore denies the same.

21. Einstein admits that Jefferson operates GAC hospitals in Pennsylvania and New Jersey, IRFs in Pennsylvania, and outpatient and urgent care locations in Pennsylvania and New Jersey. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 21 of the Complaint, and therefore denies the same.

22. Einstein admits that Jefferson operates GAC hospitals in Pennsylvania. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 22, and therefore denies the same.

23. Einstein admits that Jefferson is a partial owner, through its ownership of Aria Health, of Health Partners Plans. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 23 of the Complaint, and therefore denies the same.

24. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 24 of the Complaint, and therefore denies the same.

25. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 25 of the Complaint, and therefore denies the same.

26. Einstein admits the allegations contained in the first sentence of Paragraph 26 of the Complaint. Einstein admits that it operates three GAC hospital facilities—one in Philadelphia and two in Montgomery County—and one IRF that provides inpatient rehabilitation services at five locations. Einstein denies the allegations contained in the third sentence of

Paragraph 26 of the Complaint. Einstein admits the remaining allegations contained in Paragraph 26.

27. Einstein denies the allegations contained in the first sentence of Paragraph 27 of the Complaint. Einstein admits the allegations contained in the second, third, and fourth sentences of Paragraph 27 of the Complaint. Einstein admits it operates a second GAC hospital, Einstein Medical Center Montgomery, with 191-beds in East Norriton in central Montgomery County. Einstein denies the last sentence of Paragraph 27 of the Complaint.

28. Einstein denies the allegations contained in the first sentence of Paragraph 28 as stated. Einstein admits that Moss at Elkins Park has 130 licensed beds, but denies the remaining allegations contained in the second sentence of Paragraph 28 of the Complaint. Einstein admits the remaining allegations in Paragraph 28 of the Complaint.

29. Einstein admits the first sentence of Paragraph 29 of the Complaint. Einstein admits that the figure contained in the second sentence of Paragraph 29 of the Complaint was included in the parties' pre-merger regulatory filings pursuant to the Hart-Scott-Rodino Act, but denies that this figure represents a current or pertinent valuation of Einstein's assets. Einstein admits that the combined entity would operate 14 GAC hospital facilities, but denies the remaining allegations contained in the third sentence of Paragraph 29 of the Complaint. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the last sentence of Paragraph 29, and therefore denies the same.

30. Einstein denies the allegations contained in Paragraph 30 of the Complaint.

31. The allegations in Paragraph 31 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

32. The allegations in Paragraph 32 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

33. Einstein denies the allegations contained in Paragraph 33 of the Complaint.

34. The allegations in Paragraph 34 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

35. The allegations in Paragraph 35 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

36. The allegations in Paragraph 36 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

37. Einstein admits that IRFs are licensed as a type of hospital facility or operate under a GAC hospital license and that they provide inpatient rehabilitation services, among other services. Einstein denies the allegations contained in the second, third, and fourth sentences of Paragraph 37 of the Complaint. Einstein admits that the Centers for Medicare and Medicaid Services have requirements to obtain certification for reimbursement as an IRF and states that the contents of those requirements speak for themselves.

38. Einstein denies the allegations contained in Paragraph 38 of the Complaint.

39. The allegations in Paragraph 39 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

40. The allegations in Paragraph 40 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

41. The allegations in Paragraph 41 state legal assertions as to which no response is required. To the extent a response is required, Einstein denies the allegations.

42. Einstein denies the allegations contained in the first, second, and third sentences of Paragraph 42 of the Complaint. The last sentence of Paragraph 42 contains a legal assertion, as to which no response is required. To the extent a response is required, Einstein denies the allegations.

43. Einstein denies the allegations contained in Paragraph 43 of the Complaint.

44. Einstein denies the allegations contained in Paragraph 44 of the Complaint.

45. Einstein denies the allegations contained in Paragraph 45 of the Complaint.

46. Einstein denies the allegations contained in Paragraph 46 of the Complaint.

47. Einstein admits that Einstein and Jefferson provide inpatient GAC hospital services to commercially insured, governmentally insured, and uninsured patients in the greater Philadelphia region. Einstein admits that it and Jefferson provide inpatient rehabilitation services to commercially insured, governmentally insured, and uninsured patients in the greater Philadelphia region. Einstein denies the remaining allegations contained in the first and second sentences of Paragraph 47 of the Complaint. Einstein denies the allegations contained in the third sentence of Paragraph 47 of the Complaint. The last sentence of Paragraph 47 contains a legal assertion as to which no response is required. To the extent a response is required, Einstein denies the allegations.

48. The first sentence of Paragraph 48 of the Complaint contains legal conclusions, as to which no response is required. To the extent a response is required, Einstein denies the allegations. Einstein denies the allegations contained in the last sentence of Paragraph 48 of the Complaint.

49. Einstein denies the allegations contained in Paragraph 49 of the Complaint.

50. Einstein denies the allegations contained in Paragraph 50 of the Complaint.

51. Einstein denies the allegations contained in Paragraph 51 of the Complaint.

52. Einstein admits that hospital systems seek contracts with commercial health insurers and seek to attract patients to their facilities. Einstein denies the remaining allegations contained in Paragraph 52 of the Complaint.

53. Einstein denies the allegations contained in the first sentence of Paragraph 53 of the Complaint. Einstein admits that it sometimes negotiates with commercial health insurers to be an in-network provider of GAC services. Einstein admits that the financial terms under which it is reimbursed for its GAC services are sometimes negotiated as part of that process. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations as to other hospitals in Paragraph 53, and therefore denies the same.

54. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 54 of the Complaint, and therefore denies the same.

55. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 55 of the Complaint, and therefore denies the same.

56. Einstein denies the allegations contained in Paragraph 56 of the Complaint.

57. Einstein denies the allegations contained in Paragraph 57 of the Complaint.

58. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 58 of the Complaint, and therefore denies the same.

59. Einstein denies the allegations contained in the first, second, third, and fourth sentences of Paragraph 59 of the Complaint. Einstein lacks knowledge or information sufficient

to form a belief concerning the truth of the allegations in the last sentence of Paragraph 59, and therefore denies the same.

60. Einstein denies the allegations in the first sentence of Paragraph 60 of the Complaint. Einstein admits that the second, third, fourth, fifth, sixth, and seventh sentences of Paragraph 60 reference internal Einstein documents. However, Einstein denies the Commission's characterization of these documents, which take selected language out of context. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the eighth sentence of Paragraph 60, and therefore denies the same. Einstein denies the allegations contained in the last sentence of Paragraph 60 of the Complaint.

61. Einstein denies the allegations contained in Paragraph 61 of the Complaint.

62. Einstein denies the allegations contained in the first sentence of Paragraph 62 of the Complaint. Einstein admits that the second sentence of Paragraph 62 references testimony from an Einstein employee. However, Einstein denies the Commission's characterization of this testimony, which takes selected language out of context. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the third and fourth sentences of Paragraph 62, and therefore denies the same. Einstein denies the allegations contained in the fifth sentence of Paragraph 62 of the Complaint. Einstein admits that the last sentence of Paragraph 62 references an internal Einstein document. However, Einstein denies the Commission's characterization of the statement referenced in Paragraph 62 of the Complaint.

63. Einstein denies the allegations contained in Paragraph 63 of the Complaint.

64. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in the first sentence of Paragraph 64 of the Complaint, and

therefore denies the same. Einstein denies the allegations contained in the second sentence of Paragraph 64 of the Complaint. Einstein admits that it provides inpatient GAC hospital services and inpatient rehabilitation services in Pennsylvania. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in the last sentence of Paragraph 64 of the Complaint, and therefore denies the same.

65. Einstein denies the allegations contained in the first and second sentences of Paragraph 65 of the Complaint. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the remaining allegations contained in Paragraph 65 of the Complaint, and therefore denies the same.

66. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations contained in Paragraph 66 of the Complaint, and therefore denies the same.

67. Einstein denies the allegations contained in Paragraph 67 of the Complaint.

68. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations in the first sentence of Paragraph 68 of the Complaint, and therefore denies the same. Einstein denies the allegations contained in the second sentence of Paragraph 68 as stated. Einstein denies the allegations contained in the third sentence of Paragraph 68. Einstein denies the allegations contained in the last sentence of Paragraph 68 as to Einstein. Einstein lacks knowledge or information sufficient to form a belief concerning the truth of the allegations as to Jefferson in the last sentence of Paragraph 68, and therefore denies the same.

69. Einstein denies the allegations contained in Paragraph 69 of the Complaint.

70. Einstein denies the allegations contained in Paragraph 70 of the Complaint.

71. Einstein denies the allegations contained in Paragraph 71 of the Complaint.

72. Einstein denies the allegations contained in Paragraph 72 of the Complaint.

73. Einstein denies the allegations contained in Paragraph 73 of the Complaint.

74. In response to Paragraph 74 of the Complaint, Einstein incorporates its responses to the allegations contained in Paragraphs 1 through 73 as if fully set forth herein.

75. Einstein denies the allegations contained in Paragraph 75 of the Complaint.

76. In response to Paragraph 76 of the Complaint, Einstein incorporates its responses to the allegations contained in Paragraph 1 through 75 as if fully set forth herein.

77. Einstein denies the allegations contained in Paragraph 77 of the Complaint.

AFFIRMATIVE DEFENSES

Einstein asserts the following defenses, without assuming the burden of proof for any defense that would otherwise rest with the Commission. Einstein has not knowingly or intentionally waived any applicable defense, and hereby reserves the right to rely upon any other applicable defense that may become available or apparent during the course of this action. Einstein reserves the right to amend, or seek to amend, this Answer to assert such defenses.

FIRST DEFENSE

The Complaint fails to state a claim on which relief can be granted.

SECOND DEFENSE

The combination of Jefferson and Einstein's hospital systems will be pro-competitive, and will result in substantial merger-specific pricing efficiencies, cost synergies, and other procompetitive effects, which will inure to the benefit of consumers of healthcare in the greater Philadelphia region. Einstein does not concede any of the anticompetitive effects proffered by the Commission, but in any event, represents that the foregoing procompetitive benefits are

substantial and will greatly outweigh any and all of the proffered anticompetitive effects.

THIRD DEFENSE

Einstein asserts the weakened competitor and failing firm defenses.

FOURTH DEFENSE

Einstein incorporates by reference the affirmative defenses put forth by Jefferson in its Answer to the Commission's Complaint.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, Thomas Jefferson University requests that the Commission enter judgment in its favor as follows:

- A. The Complaint be dismissed with 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: March 12, 2020

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on March 12, 2020, I filed the foregoing document electronically using the FTC's e-filing system, which will send notification of such filings to:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
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Washington, DC 20590

I also hereby certify that I caused a true and correct copy of the foregoing documents to be served upon the following via electronic mail:

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Attorneys for Respondent
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/s/ Leigh L. Oliver
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Notice of Electronic Service

I hereby certify that on March 12, 2020, I filed an electronic copy of the foregoing Answer of Respondent Albert Einstein Healthcare Network, with:

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Donald Clark
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I hereby certify that on March 12, 2020, I served via E-Service an electronic copy of the foregoing Answer of Respondent Albert Einstein Healthcare Network, upon:

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