IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, 600 Pennsylvania Avenue, NW Washington, DC 20580, Petitioner, v. **PROMEDICA HEALTH SYSTEM, INC**. 1801 Richards Road Toledo, Ohio 43607, **PARAMOUNT HEALTH CARE**, 1901 Indian Wood Circle Maumee, Ohio 43537, **ST. LUKE'S HOSPITAL** 5901 Monclova Road Maumee, Ohio 43537, Respondents.	)	Misc. No.

EMERGENCY PETITION OF THE FEDERAL TRADE COMMISSION FOR AN ORDER ENFORCING SUBPOENAS DUCES TECUM AND CIVIL INVESTIGATIVE DEMANDS ISSUED IN A MERGER INVESTIGATION

This is an emergency petition to enforce Federal Trade Commission ("FTC" or "Commission") investigative process seeking information relating to a hospital merger that has been consummated, subject to a limited hold-separate agreement that expires on October 30, 2010. Unless the Commission receives the information that it needs by October 21, FTC staff will not have time to review the sought-after materials and use them to inform a recommendation for the Commission prior to expiration of the hold-separate agreement. Once the hold-separate agreement expires, the parties can eliminate service offerings at the acquired hospital, terminate health plan contracts, and take additional steps to consolidate services and operations. Once that

occurs, the Commission's ability to obtain effective relief, if the transaction is later held unlawful, will be greatly diminished.

Statement in Support of Emergency Relief

The Federal Trade Commission petitions this Court, pursuant to Sections 9, 16 and 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 49, 56, 57b-1, and 28 U.S.C. § 1367(a), for an order requiring Respondents, ProMedica Health System, Inc. ("ProMedica"), St. Luke's Hospital ("St. Luke's"), and Paramount Health Care ("Paramount"), a subsidiary of ProMedica, to produce documents in accordance with FTC investigative subpoenas *duces tecum* and to provide data and respond to written interrogatories in accordance with FTC civil investigative demands ("CIDs"). The subpoenas and CIDs were issued August 25, 2010, as part of a merger investigation that seeks to determine whether ProMedica's acquisition of St. Luke's and related entities through a Joinder Agreement would violate Section 7 of the Clayton Act, 15 U.S.C. § 18, or Section 5 of the FTC Act, 15 U.S.C. § 45.

Respondents closed the transaction on August 31, 2010, subject to a limited "hold-separate" agreement. That agreement allowed them to close the transaction, but required the parties to delay (among other things) integration or consolidation of the hospitals' services and staff for 60 days after closing. The hold-separate agreement expires on October 30, 2010. (Pet. Exh. 1, Declaration of Jeanne Liu ¶ 14 (October 1, 2010) ("Liu Dec.").) After that date, Respondents may, subject to certain contractual limitations, eliminate service offerings at St. Luke's, terminate health plan contracts, and take additional steps to consolidate their services and operations.

The short period of time remaining before the hold-separate agreement expires requires the Commission to seek expedition of this petition. If, after completion of FTC staff's investigation, the Commission determines that the transaction is anticompetitive, it must be prepared to institute an action for temporary and preliminary relief on a very abbreviated schedule over which it has, at most, very limited control. *See* 15 U.S.C. § 53(b). As a result, time is of the essence in the Court's resolution of this petition. Any delay in the resolution of this petition may force the FTC to assess the competitive effects of the transaction on incomplete information. Furthermore, if the Commission's evaluation of the proposed transaction is delayed, by Respondents' failure to comply with the subpoenas and CIDs until after the hold-separate agreement expires, further harm may result because it would be far more difficult for the Commission to obtain effective relief once Respondents have consolidated their services and operations. (Pet. Exh. 1, Liu Dec. ¶ 14.) For that reason, and in order to obtain the requested materials in a timely manner, the Commission has labeled this as an emergency petition.

The Commission, therefore, respectfully requests that this Court issue an Order to Show Cause in the form accompanying this Petition, and schedule a hearing thereon as soon as practicable, no later than 11 calendar days from the date of filing of this Petition. Additionally, the Commission requests that any opposition to this Petition be filed with the Clerk and served on counsel for the Commission, by hand or by email, no later than 9:30 a.m. on October 12, 2010, and that the Commission's reply (if any), be due (and be served by hand or by email) two days after the filing of those oppositions.[1]

[1] Contemporaneously with this filing, counsel for the parties will be made aware that the Commission is seeking enforcement of the CIDs and subpoenas and will be provided courtesy copies by email.

In support of its petition, the Commission states as follows:

1. The Commission is an administrative agency of the United States, organized and existing pursuant to the FTC Act, 15 U.S.C. § 41 et seq. The Commission is authorized and directed by Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), to prohibit unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. The Commission is also authorized to enforce Section 7 of the Clayton Act, 15 U.S.C. § 18, which prohibits acquisitions where "the effect of such acquisition may be substantially to lessen competition, or tend to create a monopoly."

2. Sections 9, 20(c), and 20(h) of the FTC Act, 15 U.S.C. §§ 49, 57b-1(e), and 57b-1(h) empower the Commission to require, by subpoena, the production of documentary materials and to require, by civil investigative demand, responses to written interrogatories.

3. This Court has jurisdiction over Respondents and the authority to enforce the Commission's subpoenas and CIDs pursuant to Section 9 of the FTC Act, 15 U.S.C. § 49, which provides, in pertinent part, as follows:

> Any of the district courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any person, partnership, or corporation issue an order requiring such person, partnership, or corporation to appear before the Commission, or to produce documentary evidence if so ordered, or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

Additionally, because this Court has original jurisdiction over a subpoena enforcement action, and enforcement of the CIDs is "so related" to that claim "that they form part of the same case or controversy," this Court has supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a), to enforce the outstanding CIDs.

4. The Declaration of Jeanne Liu, which verifies the allegations of this petition, is attached hereto as Pet. Exh. 1. Additional exhibits are as follows:

Pet. Exh. 2 Commission Resolution Directing Use of Compulsory Process in Nonpublic Investigation, August 9, 2010 (FTC File No.101-0167);

Pet. Exh. 3 Civil Investigative Demand to ProMedica, August 25, 2010;

Pet. Exh. 4 Subpoena Duces Tecum to ProMedica, August 25, 2010;

Pet. Exh. 5 Civil Investigative Demand to Paramount, August 25, 2010;

Pet. Exh. 6 Subpoena Duces Tecum to Paramount, August 25, 2010;

Pet. Exh. 7 Civil Investigative Demand to St. Luke's, August 25, 2010; and

Pet. Exh. 8 Subpoena Duces Tecum to St. Luke's, August 25, 2010 .

5. ProMedica is a private, not-for-profit hospital system, incorporated in the State of Ohio, with its principal place of business at 1801 Richards Road, Toledo, Ohio 43607. ProMedica is engaged in, and its business affects, "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. Prior to closing the acquisition of St. Luke's, ProMedica operated three general acute-care hospitals in the Toledo metropolitan area. (Pet. Exh. 1, Liu Dec. ¶ 3.)

6. ProMedica, through ProMedica Insurance Corporation, an Ohio for-profit corporation, and other affiliates, also offers health insurance products under the business name Paramount Health Care. Paramount has its principal place of business at 1901 Indian Wood Circle, Maumee, Ohio 43537. Paramount is engaged in, and its business affects, "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. (Pet. Exh. 1, Liu Dec. ¶ 4.)

7. St. Luke's is a private, not-for-profit hospital, incorporated in the State of Ohio, with its principal place of business at 5901 Monclova Road, Maumee, Ohio 43537. St. Luke's is

engaged in, and its business affects, "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. Prior to being acquired by ProMedica, St. Luke's was an independent general acute-care hospital that competed with ProMedica hospitals in and around Toledo, and with certain other local hospitals. (Pet. Exh. 1, Liu Dec. ¶ 5.)

8. On July 15, 2010, staff in the FTC's Bureau of Competition contacted counsel for ProMedica, Paramount, and St. Luke's and informed them that the FTC's Bureau of Competition had opened a non-public investigation of the transaction. The purpose of the investigation is to determine whether ProMedica's acquisition of St. Luke's constituted an unfair method of competition, or would substantially lessen competition in the provision of general acute-care hospital services, and in certain other services, such as obstetrics, in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, or Section 7 of the Clayton Act, 15 U.S.C. § 18. The investigation is being conducted by attorneys and economists at the FTC's Headquarters in Washington, D.C. (Pet. Exh. 1, Liu Dec. ¶ 6.)

9. On July 16, 2010, FTC staff sent an access letter asking ProMedica and St. Luke's to produce certain information and materials on a voluntary basis. In response to the access letter, ProMedica produced fewer than 40 documents. Subsequently, ProMedica submitted approximately another two dozen documents in response to requests for organizational charts, resumes, and other specific documents that FTC staff needed to prepare for investigational hearings. St. Luke's produced only 15 documents in response to the access letter and approximately another dozen documents in response to subsequent FTC requests for organizational charts, resumes, and specific documents, also in connection with staff's preparation for investigational hearings. (Pet. Exh. 1, Liu Dec. ¶ 10.)

10. Because the transaction was not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 18a, the Commission was unable to issue Requests for Additional Information and Documentary Material ("Second Requests") to the parties to conduct its investigation, as authorized by the Hart-Scott Rodino Act. Accordingly, on August 9, 2010, the Commission issued a Resolution Directing Use of Compulsory Process in Nonpublic Investigation. This resolution authorized the use of subpoenas and CIDs in connection with its inquiry into whether ProMedica's acquisition of St. Luke's constituted an "unfair method of competition" in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, or whether it "may tend substantially to lessen competition" in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. (Pet. Exh. 2.)

11. On August 25, 2010, the Commission issued CIDs and subpoenas to Respondents requiring them to produce documents that are highly relevant to the Commission's assessment of the competitive effects of the transaction. The September 24 return date allowed FTC staff only a minimum amount of time to analyze the responsive documents and evaluate the competitive effects of the transaction, and to allow the Commission to decide whether to challenge the transaction in advance of further consolidation of ProMedica's and St. Luke's services and operations. (Pet. Exh. 1, Liu Dec. ¶ 16, 37.)

12. Initially, ProMedica and St. Luke's planned to close their transaction on July 30, 2010. However, on August 18, 2010, after agreeing to provide the FTC with two additional weeks to conduct its investigation, ProMedica agreed to a limited hold-separate agreement. The agreement allowed the parties to close the transaction, but required them to delay integration or consolidation of the hospitals' services and staff, among other things, for 60 days after closing.

The parties closed the transaction on August 31, 2010, and thus the agreement to delay integration and possible elimination of services at St. Luke's expires on October 30, 2010. (Pet. Exh. 1, Liu Dec. ¶ 14.)

13. Since the subpoenas and CIDs were issued, FTC staff have asked Respondents to start a rolling production of materials and expressed a willingness to modify the subpoenas and CIDs to reduce any burden of complying, consistent with the Commission's need to conduct a thorough investigation. The details of these discussions are related in the accompanying declaration of the attorney leading the Commission's investigation of the ProMedica-St. Luke's transaction. (Pet. Exh. 1, Liu Dec. ¶¶ 8-35.) All documents, but particularly the key documents identified to the Respondents, must be submitted promptly and in sufficient time for FTC staff to complete its investigation and advise the Commission in advance of the date on which the hold-separate agreement expires. Specifically, Commission staff will need at least seven days to review the sought-after material (an extremely limited amount of time compared to typical FTC merger investigations) in order to advise the Commission in a timely manner whether to challenge the transaction and, if so, give the Commission time to seek a temporary or preliminary injunction. As a result, FTC staff needs the sought-after materials by October 21 to meet those time constraints. (Pet. Exh. 1, Liu Dec. ¶¶ 14, 36.)

14. All the documents and data requested by the subpoenas and CIDs are relevant to the Commission's investigation. However, the following documents and data are the most crucial to FTC staff's analysis**:**

a. Documents relating to St. Luke's current and projected financial outlook and strategies contemplated by St. Luke's to maintain or improve its financial outlook;

b. Individual-level hospital claims data for inpatient services;

c. Internal company financials (including budgets, profit-and-loss statements, and documents regarding contribution margins, fixed and variable costs, and forward-looking financial projections);

d. Documents regarding local competition in hospital services;

e. Contracts with health plans and associated contract-negotiation documents;

f. Documents regarding the ProMedica-St. Luke's transaction and its potential effects on competition; and

g. Documents and data supporting the parties' claimed efficiencies.

15. To date, however, Respondents ProMedica and Paramount have not provided these items and St. Luke's has only partially responded. No party has come even close to substantial compliance with the CIDs and subpoenas. ProMedica has produced only its organizational charts; St. Luke's has produced some documents, but nothing approaching full compliance with the CID and subpoena; and Paramount has produced nothing at all. (Pet. Exh. 1, Liu Dec. ¶ 7.) Indeed, less than one week prior to the return date, ProMedica's counsel had not yet visited the client's offices to begin the document and data retrieval. (Pet. Exh. 1, Liu Dec. ¶ 28.)

16. Respondents have not filed an administrative petition to limit or quash the CIDs or subpoenas, timely or otherwise, as provided in FTC Rule 2.7(d), 16 C.F.R. § 2.7(d). (Pet. Exh. 1, Liu Dec. ¶ 36.)

17. Respondents' failure to substantially comply with the Commission's information demands has materially impeded the Commission's investigation. It is in the public interest that it no longer be delayed.

18. No previous application for the relief sought herein has been made to this or to any other court.

WHEREFORE, the Commission invokes the aid of this Court and prays:

1. That this Court enter an order directing Respondents to show cause why they should not be required to comply with and obey the CIDs and subpoenas;

2. That this Court subsequently enter its own order directing Respondents to provide the responsive materials by October 21, 2010; and

3. That the Court grant such other relief as it deems just and proper.

Respectfully submitted,

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Petition Exhibit 1

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FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, Petitioner, v. PROMEDICA HEALTH SYSTEM, INC., PARAMOUNT HEALTH CARE, & ST. LUKE'S HOSPITAL, Respondents.	Misc. No.

DECLARATION OF JEANNE LIU

Pursuant to 28 U.S.C. § 1746, I declare as follows:

1. I am an attorney employed by the Federal Trade Commission ("FTC" or "Commission"), in Washington, DC. I am the attorney leading the Commission's investigation of ProMedica Health System, Inc.'s ("PHS" or "ProMedica") acquisition of St. Luke's Hospital ("SLH" or "St. Luke's") and related entities through a Joinder Agreement.

2. I am authorized to execute a declaration verifying the facts that are set forth in the Petition of the Federal Trade Commission for an Order Enforcing Subpoenas *Duces Tecum* ("SDT") and Civil Investigative Demands ("CID") Issued in a Merger Investigation. I have read the petition and exhibits thereto (hereinafter referred to as "Pet. Exh."), and verify that Pet. Exh. 2 through Pet. Exh. 8 are true and correct copies of the original documents. The facts set forth herein are based on my personal knowledge or information made known to me in the course of my official duties.

3. ProMedica is a private, not-for-profit hospital system, incorporated in the State of Ohio, with its principal place of business at 1801 Richards Road, Toledo, Ohio 43607. ProMedica is engaged in, and its business affects, "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. Prior to the acquisition of St. Luke's, ProMedica operated three general acute-care hospitals in the Toledo metropolitan area.

4. ProMedica, through ProMedica Insurance Corporation, an Ohio for-profit corporation, and other affiliates, offers health insurance products under the business name Paramount Health Care ("Paramount"). Paramount has its principal place of business at 1901 Indian Wood Circle, Maumee, Ohio 43537. Paramount is engaged in, and its business affects, "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

5. St. Luke's is a private, not-for-profit hospital, incorporated in the State of Ohio, with its principal place of business at 5901 Monclova Road, Maumee, Ohio 43537. St. Luke's is engaged in, and its business affects, "commerce," as that term is defined in Section 4 of the FTC Act, 15 U.S.C. § 44. Prior to the joinder, St. Luke's was an independent general acute-care hospital that competed with the ProMedica hospitals in and around Toledo, along with certain other local hospitals.

6. The FTC's current investigation relates to whether ProMedica's joinder with St. Luke's would substantially lessen competition in the provision of general acute-care hospital services, and in particular services such as obstetric services. The investigation is being conducted by attorneys and economists in the FTC's Washington, DC office.

7. As described below, none of the parties has substantially complied with the SDTs and CIDs issued to them by the FTC in connection with this investigation. The return date

was September 24, 2010, and to date, despite my numerous requests for a rolling production of documents and data, ProMedica has produced only a single document – an organization chart – to the FTC pursuant to the SDT and CID. Paramount has produced no documents or information in response to the SDT and CID. Although St. Luke's has begun producing documents in response to the SDT, many of the most important types of documents are missing from its production. With respect to the CID, St. Luke's has produced only partial responses to certain specifications, while producing nothing at all in response to others.

8. My first contact with the parties took place on July 14, 2010, when Alexis J. Gilman, a staff attorney at the FTC, and I spoke to outside counsel for ProMedica and Paramount, David Marx of McDermott Will & Emery LLP ("MWE"), regarding ProMedica's proposed joinder with St. Luke's. Later that day, Mr. Gilman and I spoke to St. Luke's outside counsel, John Eklund of Calfee, Halter & Griswold LLP ("Calfee"), regarding the transaction.

9. On July 15, 2010, I sent letters to Mr. Marx and Mr. Eklund informing them that the FTC's Bureau of Competition had opened a non-public preliminary investigation of the transaction. The transaction was not reportable under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a. As a result, the FTC could not issue Requests for Additional Information and Documentary Material ("Second Requests") to the parties in connection with its investigation.

10. On July 16, 2010, I sent a voluntary access letter ("Access Letter") to Mr. Marx as well as to Mr. Eklund, requesting that ProMedica and St. Luke's, respectively, voluntarily

produce certain information and materials in their possession, custody, or control. Subsequently, MWE, on behalf of ProMedica, produced less than 40 documents pursuant to the Access Letter and approximately two dozen documents in response to FTC requests for organizational charts, resumes, and specific documents to prepare for investigational hearings. Mr. Eklund, on behalf of St. Luke's, produced approximately 15 documents pursuant to the Access Letter and approximately a dozen documents in response to subsequent FTC requests for organizational charts, resumes, and specific documents to prepare for investigational hearings.

11. On July 29, 2010, representatives from ProMedica and St. Luke's, including the parties' in-house counsel, outside counsel, and economic consultants, met with FTC staff in Washington, DC to discuss the transaction.

12. On August 6, 2010, I sent a letter to Mr. Marx notifying him that the FTC's investigation was moving from a preliminary investigation into a full-phase investigation.

13. On August 9, 2010, the Commission issued a Resolution Authorizing Use of Compulsory Process in Nonpublic Investigation (FTC File No. 101-0167) ("Resolution"). The Resolution authorized any and all compulsory process available to the Commission to be used to determine whether ProMedica's acquisition of St. Luke's by means of a Joinder Agreement violated Section 5 of the Federal Trade Commission Act, 15 U.S. C. § 45, as amended, or Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended.

14. ProMedica and St. Luke's originally intended to close their transaction on July 30, 2010. After initially agreeing only to provide the FTC with two additional weeks to conduct its investigation, ProMedica agreed to a limited hold-separate arrangement on August 18,

2010, which allowed the parties to close the transaction but required them to delay integration or consolidation of the hospitals' services and staff, among other things, for 60 days after closing in order to preserve the Commission's ability to protect consumers pending the conclusion of its investigation. This agreement was crucial because it is substantially more difficult – and in some cases, impossible – for the Commission to obtain effective relief after a transaction closes and the parties integrate their operations. The parties closed the transaction on August 31, 2010, and thus have agreed to delay integration and possible elimination of services only until October 30, 2010.

15. On August 25, 2010, in the interests of time, FTC staff sent Mr. Marx, via e-mail, an advance copy of the SDTs and CIDs that staff had submitted to the Commission for approval and issuance to ProMedica and Paramount. That same day we sent Mr. Eklund, via e-mail, an advance copy of the SDT and CID that staff had submitted to the Commission for approval and issuance to St. Luke's. We also provided Mr. Marx and Mr. Eklund with copies of the FTC's Production Guide for submission of documents and data.

16. Later on August 25, the Commission issued the SDTs and CIDs to ProMedica, Paramount, and St. Luke's requiring them to produce the specified documents and information no later than September 24, 2010. MWE accepted service of the SDTs and CIDs on behalf of ProMedica and Paramount. Calfee accepted service of the SDT and CID on behalf of St. Luke's.

17. On September 2, 2010, having heard nothing from the parties, I sent an e-mail to Mr. Marx and Stephen Wu of MWE, and a separate e-mail to Mr. Eklund, inquiring about

ProMedica/Paramount's and St. Luke's respective plans to submit documents and information responsive to the SDTs and CIDs. I requested a rolling submission and offered to identify categories of priority documents and data to be produced early in the production process.

18. Later that day, ProMedica's counsel responded that they were evaluating to what extent ProMedica and Paramount could respond to the SDTs and CIDs and assessing what modifications they would like to request. They further requested that we identify our priority specifications.

19. On September 3, Mr. Gilman and I held a telephone conference with Mr. Wu and Jennifer Westbrook of MWE. We identified the FTC staff's priority specifications (*e.g.*, specifications requesting transaction documents, ProMedica contracts with health plans, Paramount contracts with hospitals, and various data). Mr. Wu said he would come back to FTC staff the following week with a request for modifications. Later that day, MWE submitted PHS organizational charts (which were resubmitted on September 10 with corrected Bates numbering).

20. On September 3, Mr. Eklund responded to my e-mail from the day before. He stated that he wanted to discuss ways to ease St. Luke's burden for responding to certain specifications. We agreed to speak the following business day, Tuesday, September 7.

21. On September 7, Stelios Xenakis, an attorney at the FTC, and I spoke to Mr. Eklund and Maura Hughes, also of Calfee. We identified several priority specifications and offered to make Commission representatives available for any questions about the specifications

requesting data. We also invited counsel to propose modifications they believed necessary or appropriate under their client's individual circumstances.

22. ProMedica and Paramount's counsel did not discuss the SDTs and CIDs with us again until September 10, 2010. On that date, by telephone conference with David Harding, a visiting fellow at the FTC, Mr. Gilman, and me, MWE proposed limiting ProMedica and Paramount's search for responsive materials to 11 custodians, moving the relevant date range for certain specifications from 2001 to 2004 or 2007, and limiting their clients' claims-data responses to inpatient data only, thereby excluding outpatient data. When we asked whether ProMedica would consider a stipulation that prevented ProMedica from arguing that the relevant market included outpatient services if we, in exchange, excluded outpatient data from our request, Mr. Wu said that they would consider it. Mr. Wu asked if any of the specifications could be limited to certain business units or hospital departments. We said that we would need a list of ProMedica's business units and departments to evaluate whether the specifications could be so limited and to select which ones. We also discussed eight specifications that Mr. Wu claimed ProMedica or Paramount either would not be able to respond to, that required clarification, or for which they suggested that a modification would relieve their burden. Moreover, with respect to one specification of the Paramount CID, MWE indicated that they could provide certain limited data within 30 days and that providing a complete data response could take Paramount 60-90 days.

23. On September 13, 2010, Mr. Harding and I held a telephone conference with Mr. Wu of MWE. I stated the custodians MWE proposed on September 10 were acceptable to me,

and I would recommend approval of these custodians to my supervisor, but that we were still considering whether additional custodians needed to be added. I also stated that I approved one of the proposed changes to Paramount SDT Specification 2. Finally, I requested a description of the duties of another ProMedica individual to determine whether he should be added to the agreed-upon list of custodians to be searched for responsive documents.

24. The next day, on September 14, 2010, Mr. Gilman, Mr. Harding, and I spoke to Ms. Westbrook of MWE by telephone. We asked about the responsibilities of three additional ProMedica and Paramount personnel to determine if they should be added to the custodian list. Ms. Westbrook stated she would get back to us with that information. Ms. Westbrook indicated she was continuing to compile information and sample data to support some additional modification requests. I asked that Paramount prioritize the easily-obtainable, more-limited data we had discussed on September 10, but stated Paramount also must produce older data that was date-responsive under the CID. I further agreed that ProMedica could limit its production of responsive health plan contracts to the top ten plans only.

25. Later that day, having heard nothing from St. Luke's counsel since September 7, 2010, I left Mr. Eklund a voicemail inviting further discussion about his client's plans for responding to the SDT and CID.

26. On September 16, Mr. Eklund and I spoke. He informed me that the Commission would be receiving some documents later that day, albeit not in the form mandated by the SDT and CID. Consequently, we held a joint telephone conference with James Whitelaw, one

of the Commission's litigation-support specialists, about how to process this and future submissions from St. Luke's. Given the urgent need to receive documents, and our desire to alleviate any unnecessary burden on St. Luke's, we agreed to receive St. Luke's production in the format provided, even though it did not comply with the SDT and CID requirements. I again offered to make individuals within the Commission available for any questions St. Luke's had in responding to the SDT and CID. On the afternoon of September 16, 2010, as we had discussed, St. Luke's produced thirteen documents and data files in response to the SDT and CID.

27. On September 17, 2010, we received a production of documents and data from St. Luke's in response to certain specifications in the SDT and CID.

28. On Sunday, September 19, 2010, Sara Razi, an attorney at the FTC, and I had a telephone conference with Mr. Wu of MWE, during which we confirmed the final list of individuals to be searched for responsive materials. Just three custodians were added to the 11 that MWE, on behalf of ProMedica and Paramount, had initially proposed on September 10, and which I had conditionally approved on September 13. Mr. Wu stated ProMedica was not prepared to stipulate to an inpatient-only product market, but he proposed that, in return for the FTC's agreement to modify the CIDs to exclude outpatient data, ProMedica would pledge not to use any data not produced to the FTC in any subsequent federal court or administrative proceeding. During this call – five days before the return date on the SDTs and CIDs – Mr. Wu disclosed for the first time that ProMedica's counsel had not yet even visited the client's offices to begin collecting documents; he stated that ProMedica wanted to finalize the custodian list so that

ProMedica's counsel could go onto the client's site on one occasion only. Additionally, for the first time, counsel revealed that data retrieval had not yet begun because data could not be retrieved from the two operative data systems simultaneously, and the client was waiting to hear which system to begin working on first. Again, we instructed that the more recent data should be retrieved immediately and the older data thereafter.

29. When I spoke to Mr. Eklund again on September 20, 2010, I asked about St. Luke's plan to comply with the September 24, 2010 deadline. Although St. Luke's had never requested an extension of the deadline and had never before raised a concern about meeting the deadline, he simply indicated that St. Luke's did not intend to comply with the SDT or CID by the return date. Yet, Mr. Eklund still did not request an extension of the deadline on this call. I once again offered an opportunity for St. Luke's to speak with Commission representatives. To date, Mr. Eklund still has not taken me up on my repeated offers.

30. On September 21 – three days before the return date – MWE sent a sample of the type of data they proposed to submit in response to one of the specifications. That same day, just before midnight, MWE sent an e-mail with a list of the 14 custodians "whose files we intend to search," and asked FTC staff to confirm their agreement with this list. Of these 14, 11 had been proposed by MWE on September 10 and conditionally confirmed by me on September 13 (as indicated above); the other three were requested to be added by FTC staff on the September 19 call with Mr. Wu.

31. The following morning, on September 22, I confirmed via e-mail that the list of 14 custodians included in Mr. Wu's September 21 e-mail was acceptable. Later that day,

Mr. Gilman and I spoke to Mr. Wu, who told us that they were still gathering a list of ProMedica business units and departments, which we had discussed on September 10, to limit ProMedica's response in certain respects. He told us that he had some of this information already but was holding off sending it to us until he had all of the information. Mr. Wu also said it would be less burdensome for his client if the date range applicable to certain specifications was changed to 2004 or 2007, instead of 2001. Finally, Mr. Wu said that they would not start their document collection until the date-range and outpatient issues were resolved. Following that telephone conversation, Mr. Wu confirmed in writing his proposal that ProMedica would not assert any documents or data in defense of the transaction if such documents or data had not been produced to the FTC in response to the SDTs and CIDs and, in exchange, the FTC would eliminate the need to provide outpatient data for certain specifications. Mr. Gilman sent Mr. Wu an e-mail that day requesting clarification whether MWE was proposing to limit its request for outpatient-data modifications to only three specifications. The following day, September 23, 2010, Mr. Wu confirmed which specifications he was referring to in his September 22 modification request.

32. On September 22, 2010, I sent Mr. Eklund an e-mail informing him that part of St. Luke's September 17 production included executed contracts with non-privileged information redacted and asking him to resubmit these documents unredacted, as required by the SDT. On September 23, Mr. Eklund e-mailed his reply, saying he would see to this issue. As yet, unredacted versions of these contracts have not been produced.

33. On September 24, FTC staff sent MWE a letter via e-mail confirming in writing all the modifications that had been discussed since September 3, 2010, and noting that no documents, other than the PHS organizational charts, had been produced by ProMedica or Paramount in response to the SDTs or CIDs as of the return date.

34. Also on September 24, St. Luke's produced 17 documents, increasing its production total to approximately 300 documents in response to the SDT – still significantly less than is typically produced by comparable companies receiving an SDT in an investigation such as this. With respect to the CID, St. Luke's has produced only partial responses to certain specifications, while producing nothing at all in response to others. In sum, many important types of documents and data are missing from the production.

35. On September 27, three days after the return date and 17 days after this issue was first discussed, Mr. Wu sent FTC staff an e-mail providing a list of ProMedica business units and departments in connection with ProMedica's request to limit production of responsive financial reports to certain parts of the company only. FTC staff responded by e-mail on September 29, 2010.

36. In sum, no party has complied with the FTC's SDT or CID, no party has requested an extension of the deadline, and no party has provided a schedule pursuant to which it will agree to provide documents and information. In addition, no party has filed a timely (or even untimely) petition to quash or modify the subpoenas or CIDs pursuant to the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.7(d). The parties have never raised a question about the Commission's authority to issue the SDTs and CIDs, nor have they questioned the validity of service of process. Indeed, the parties have

made company witnesses available for investigational hearings pursuant to subpoenas *ad testificandum*.

37. The failure of ProMedica, Paramount, and St. Luke's to comply with the subpoenas and CIDs has delayed and impeded the Commission's investigation as the October 30 expiration of the hold-separate agreement quickly approaches. The materials requested by the subpoenas and CIDs are highly relevant to the FTC's investigation of the transaction and its evaluation as to whether the transaction may harm competition. Given these circumstances, prompt Court enforcement of the subpoenas and CIDs is necessary and appropriate to enable staff to collect available evidence in support of a timely recommendation to the Commission about whether to challenge the transaction.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 1, 2010.

Jeanne Liu

Petition Exhibit 2

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION

File No. 101-0167

Nature and Scope of Investigation:

To determine whether the proposed acquisition of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC; and all related entities by ProMedica Health System, Inc., violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid transaction, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, et seq. and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Dated: August 9, 2010

Petition Exhibit 3

United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

ProMedica Health System
c/o David Marx, Jr., Esq. / McDermott, Will & Emery LLP
227 W. Monroe Street, Suite 4400
Chicago, IL 60606

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission 601 New Jersey Avenue, N.W. Suite 5255 Washington, DC. 20001	Jeanne Liu or other designated counsel
	DATE AND TIME OF HEARING OR DEPOSITION

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

September 24, 2010

3. SUBJECT OF INVESTIGATION

Proposed Acquisition by ProMedica Health System, Inc., of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC., FTC File No. 101-0167

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	5. COMMISSION COUNSEL
Joan Heim (Records Custodian) Jeanne Liu (Deputy Records Custodian)	Jeanne Liu, Esq. (202) 326-3572

DATE ISSUED	COMMISSIONER'S SIGNATURE
8/25/10	Edith Ramirez

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

CIVIL INVESTIGATIVE DEMAND
ISSUED TO PROMEDICA HEALTH SYSTEM
FTC File No. 101-0167

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in the Definitions and Instructions, which appear after the following Specifications. If the Company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representatives identified in this CID. All modifications to this CID must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(c).

SPECIFICATIONS

1.* Submit for each hospital operated by the Company in the relevant area:

a. for each month, the total patient days, patient discharges, inpatient gross revenue, and inpatient net revenue for the hospital as a whole and by individual department;

b. for each year, outpatient visits, outpatient gross revenue, and outpatient net revenue for:

(i) emergency room visits, and

(ii) all other procedures.

c. the total number of licensed, available, and staffed beds on the first day of each year, and the average daily census for each year, separately for the hospital as a whole and for the relevant service;

d. for each year, and separately for the hospital as a whole and for the relevant service (broken down between inpatient and outpatient services), the dollar amount of the hospital's revenues received from, and the number of inpatients, inpatient days, and outpatient treatment episodes where the principal source of payment was each of the following sources:

(i) Medicare;

(ii) Medicaid;

(iii) any other health plan (provide data both for all such plans combined, and separately for: (A) each such health plan from which the hospital derives more than 1% of its revenues; and (B) total revenues from all such health

plans with which the hospital has contracts providing for reimbursement rates differing from standard charges of the hospital);

(iv) patients (out-of-pocket);

(v) no source of payment ("charity care" patients treated free of charge);

(vi) bad debt; and

(vii) any other source (identify, and provide dollar amounts separately for, any source from which the hospital derives more than 1% of its revenues).

e. a list provided both in hard copy and as computer file(s) showing, for each physician or other health professional who has held professional staff privileges at the hospital:

(i) name;

(ii) current (or last known) office address;

(iii) medical specialty;

(iv) medical practice group (if any);

(v) professional license number;

(vi) any other uniform physician identification number;

(vii) type of staff privileges currently or most recently held;

(viii) each other hospital at which he or she holds (or most recently held) professional staff privileges and the type of privileges held at each hospital;

(ix) the time period during which he or she held admitting privileges at the hospital;

(x) his or her employer(s), if any, during the time period during which he or she held admitting privileges at the hospital, and the time period he or she was employed by each employer; and

(xi) the number of inpatients, and the number of outpatients, he or she admitted to the hospital in each year.

f. a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred from another hospital, the transferring hospital, the date the patient was transferred, the residence 5-digit ZIP code of the patient, any diagnosis codes, length of stay, revenues for that admission, and the reason for the transfer;

g. a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred to another hospital, the transferee hospital, the date the patient was transferred, the residence 5-digit ZIP code, any diagnosis codes, and the reason for the transfer;

h. a list provided both in hard copy and as computer file(s) showing for each year, each day on which the hospital went on diversion (*i.e.,* refused to admit additional patients), the reason for each diversion, and the patient census of the hospital on the day the diversion occurred;

i. the current nominal and practical capacity, and the annual capacity utilization rate, of the hospital (specifying all other factors used to calculate capacity), and the feasibility of increasing capacity, including the costs and time required;

j. the principles used by the Company for accounting for contractual allowances and bad debt; the criteria used to determine which accounts receivable are recorded as bad debt; and the circumstances, if any, under which bad debt or contractual allowances are attributed to charity care or some similar account; and

k. for each year the amounts of bad debt and charity care recorded by the Company for each hospital in the relevant area and the amount of bad debt that was re-recorded as charity care.

2. Submit the identity of:

a. each physician organization owned or managed by the Company, and for each such organization:

(i) the physician organization's specialty or specialties;

(ii) the doctors in the physician organization; and

(iii) the billing rates of each doctor in the physician organization.

b. each entity in the relevant area in which the Company

(i) holds 50 percent or more of the outstanding voting securities of an issuer or, in the case of an unincorporated entity, has the right to 50 percent or more of the profits of the entity, or has the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(ii) has the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts, the trustees of such a trust.

c. each entity not identified in part (b) above for which the Company has an ownership interest, and for each entity submit a description of:

(i) the Company's ownership interest;

(ii) any agreement between the Company and the entity that relates to the Company's ownership in the entity submitting any such documents; and

(iii) the persons who, pursuant to an agreement between the Company and the entity, have served as officers of the entity, board members of the entity, or in any other position with the entity.

3. Submit, for each year from 2004 to the present, for any inpatient admission or discharge or outpatient treatment episode at any hospital operated by the Company in the relevant area:

a. the identity of the hospital at which the patient was treated, the address of the hospital, including 5-digit ZIP code, and any hospital identification number used for reimbursement purposes;

b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier as specified in Instruction V); if the Company is providing data in multiple records for the inpatient admission or outpatient visit, a unique identifier for the admission or visit shall also be included in each record associated with the admission or visit;

c. the patient's residence 5-digit ZIP code;

d. the patient's age (in years) and gender (if the patient age is 90 years or older the Company should so indicate, in lieu of providing the patient's age);

e. whether the treatment episode was inpatient or outpatient; if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;

f. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;

g. all UB92 revenue codes and revenue code units;

h. whether the treatment provided was for an emergency;

i. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);

j. the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment;

k. identify whether the type of health plan that was the principal source of payment was offered through the Medicare Advantage program;

l. whether the Company was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital was in;

m. whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;

n. charges of the hospital, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan including any adjustments under any stop-loss provisions or any other contractual provision, and any additional amounts paid by the patient;

o. any breakdown of the hospital's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU);

p. the identity of the patient's admitting physician and, if different, the identity of the treating physician;

q. the amount of any payment by the Company to any physicians, not including any payment received in connection with employment by the Company, for any physician services associated with admission or treatment at the Company's hospitals; and

r. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

4. Identify, provide the title, and describe the contents of each financial statement, budget, profit and loss statement, customer or departmental profitability report, and each other financial report regularly prepared by or for the Company on any periodic basis that relates to the relevant service, from year ending 2001 through year-to-date for 2010, and for each such report, state how often each is prepared and the person responsible for its preparation.

5. Submit, by hospital, Company-generated descriptions, summaries, and interpretations of contract terms and methodologies (including, but not limited to, per diem formulas, discount of charges formulas, stop loss provisions or any other formulas, codes, or templates containing the relevant terms of the contract between the hospital and health plans), that affect the total consideration any Company-owned or Company-affiliated hospital in the relevant area received or will receive under a contract with a health plan in effect at any time during the time period beginning January 1, 2004.

6. Identify for each hospital operated by the Company in the relevant area each person who is now or, since January 1, 2004, was responsible for the Company's negotiation of contracts with health plans or physician organizations, the entities for which each such person negotiates, and the time periods of that person's responsibilities.

7. State the name and address of each person that has entered or attempted to enter into, or exited from, the provision of the relevant service in the relevant area from January 1, 2000, to the present. For each such person, identify the date of its entry into or exit from the market. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.

8. Identify or describe (including the basis for your response) the following:

a. requirements for entry into the relevant service in the relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

b. the total costs required for entry into the provision of the relevant service; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the provision of the relevant service; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;

c. possible new entrants into the provision of the relevant service in the relevant area; and

d. the minimum viable scale, the minimum and optimum hospital and doctor/nurse-staff size, capacity utilization rate, volume, requirements for multi-facility, multi-services, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the provision of the relevant service.

9. List each of the Company's prior acquisitions, affiliations, joint ventures, or similar transactions, and describe each efficiency (including cost savings, economies, new product or service introductions, and product or service improvements) that was expected to be achieved, that has been actually achieved, or is in the process of being achieved from each such transaction, including in the description:

a. the steps that the Company took to achieve the efficiency and the time and costs required to achieve it;

b. the dollar value of the efficiency and a detailed explanation of how that was calculated;

c. an explanation of how each prior transaction helped the Company achieve the efficiency;

d. the reason(s) the Company could not have achieved the efficiency without the prior transaction;

e. the proportion of the dollar value of the efficiency that the company passed on to consumers and the manner and form (e.g., lower prices, better service) in which the company passed on the efficiency;

f. the identity of each person (including the person's title, telephone number, and business address) employed or retained by the company (including the company's counsel) with any responsibility for achieving, analyzing, or quantifying any efficiency described; and

g. for each efficiency that involved cost savings, state separately:

(i) the one-time fixed cost savings; and

(ii) the variable cost savings (in dollars per unit and dollars per year).

10. Provide:

    a. a timetable for the proposed joinder, a description of all actions that must be taken prior to consummation of the proposed joinder, and any harm that will result if the joinder is not consummated;

    b. a detailed description of (including the rationale for, and identification of all documents directly or indirectly used to prepare the company's response to this sub-part) all plans for changes in ProMedica's and St. Luke's operations, structure, policies, strategies, corporate goals, financing, business, officers, employees or any other area of corporate activity as a result of the proposed joinder;

    c. a detailed description of (including the identification of all documents directly or indirectly used to prepare the company's response to this sub-part and quantification, if possible, of all cost savings, economies or other efficiencies) the reasons for the proposed joinder, and the benefits, costs, and risks anticipated as a result of the proposed joinder, including, but not limited to, all cost savings, economies, or other efficiencies of whatever kind;

    d. a detailed description of the reasons why the company could not achieve each benefit, cost saving, economy, or other efficiency without the proposed joinder; and

    e. a detailed description of all statements or actions by any person (identifying the person by name, title, phone number, and business address) in support of, in opposition to, or otherwise expressing opinions about the proposed joinder or its effects.

11. Submit all information described in Instruction W below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.

12. Describe in detail the Company's policies and procedures relating to the retention and destruction of documents.

13. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

A. The term "the Company" means ProMedica Health System, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. 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 the Company and any other person.

C. 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 Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this CID. The Commission 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 specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each," "any," and "all" mean "each and every."

H. 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.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means (1) 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, and (2) services provided by any physician organization as defined herein, collectively or individually.

K. The term "relevant area" means the area encompassing the Ohio counties of Lucas, Wood, Fulton, Ottawa, Henry, Sandusky, and Seneca, and the Michigan counties of Lenawee and Monroe.

L. The term "minimum viable scale" means the smallest service volume at which average costs equal the price currently charged for the relevant service. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

M. The term "sunk costs" means the acquisition costs of tangible and intangible assets necessary to provide the relevant service that cannot be recovered through the redeployment of these assets for other uses.

N. 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.

O. The term "hospital" means a facility that provides the relevant service as defined herein.

P. 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.

Q. The term "physician organization" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine, such as a physician group.

R. 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.

S. The term "relevant transaction" means the transaction pursuant to which St. Luke's Hospital, St. Luke's Hospital Foundation, Inc., WellCare Physicians Group, LLC, and associated entities, will be integrated into the health care system of ProMedica Health System, Inc.

T. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2007, 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.

U. This CID shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this CID produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this CID.

V. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this CID, 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 CID, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company 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 Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

W. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

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 Company intends 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 CID, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

4. For each Specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.

5. 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. The Commission will return any infected media for**

replacement, which may affect the timing of the Company's compliance with this CID.

6. All documents responsive to this CID, 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 Company 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 the Company 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 Commission 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 Commission representative will provide a sample index upon request.

X. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

1. The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has

already been produced in response to this instruction), noting where redactions in the document have been made.

2. Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this CID.

3. For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

   (a) The Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

   (b) The Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

   (c) The Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

4. The Company retains all privileged documents that are responsive to CID until the completion of any investigation of the relevant transaction.

5. The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Z. 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 as disclosed or described in response to Specification 11 of this CID, but

the Company has 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.

AA. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to Jeanne Liu at 202-326-3572. The response to the CID shall be addressed to the attention of Jeanne Liu, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission. If you wish to submit your response by United States mail, please call one of the staff listed above for mailing instructions.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

_____ _____

_____
Notary Public

_____

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION

File No. 101-0167

Nature and Scope of Investigation:

To determine whether the proposed acquisition of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC; and all related entities by ProMedica Health System, Inc., violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid transaction, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, et seq. and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Dated: August 9, 2010

Petition Exhibit 4

SUBPOENA DUCES TECUM

1. TO	2. FROM
ProMedica Health System c/o David Marx, Jr., Esq. / McDermott, Will & Emery LLP 227 W. Monroe Street, Suite 4400 Chicago, IL 60606	UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

3. LOCATION OF HEARING	4. YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission 601 New Jersey Avenue, N.W. Suite 5255 Washington, D.C. 20001	Jeanne Liu or other designated counsel
	5. DATE AND TIME OF HEARING OR DEPOSITION September 24, 2010*

6. SUBJECT OF INVESTIGATION

In the matter of the proposed Acquisition by ProMedica Health System, Inc., of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC., FTC File No. 101-0167. See the attached Resolution authorizing use of Compulsory Process.

7. RECORDS YOU MUST BRING WITH YOU

Provide the responses to the specifications of the attachment. *In lieu of personal appearance, you may submit the requested material along with the certification attesting to the completeness of the response.

8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	9. COMMISSION COUNSEL
Joan Heim (Records Custodian) Jeanne Liu (Deputy Records Custodian)	Jeanne Liu, Esq. (202) 326-3572

DATE ISSUED	COMMISSIONER'S SIGNATURE
8/25/10	Elise D S

GENERAL INSTRUCTIONS

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

SUBPOENA *DUCES TECUM*
ISSUED TO PROMEDICA HEALTH SYSTEM
FTC File No. 101-0167

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Subpoena *Duces Tecum* ("SDT") requires a complete search of "the Company" as defined in the Definitions and Instructions, which appear after the following Specifications. If the Company believes that the required search or any other part of the SDT can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representatives identified in this SDT. All modifications to this SDT must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(c). You may find it useful to provide the response to Specification 1 of this SDT promptly and discuss limiting the required search with the Commission's representatives before you begin your search.

SPECIFICATIONS

1. Submit (a) one copy of each organization chart and personnel directory for the Company as a whole and for each of the Company's facilities or divisions involved in any activity relating to the relevant service in the relevant area and (b) 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 the relevant service covered by this SDT (excluding those retained solely in connection with environmental, tax, human resources, pensions, benefits, ERISA, or OSHA issues).

2. Submit for each hospital operated by the Company in the relevant area:

   a. the current bylaws and any rules or regulations of the hospital's professional staff or any department or sub-unit thereof;

   b. a copy of each completed questionnaire submitted by the hospital to the American Hospital Association in connection with its Annual Survey of Hospitals, and to any other association or government agency, in connection with any annual or other periodic survey of hospitals;

   c. a copy of each report prepared by the Joint Commission of Accreditation of Hospitals, or any other accreditation agency, in connection with accreditation of the hospital;

   d. all annual reports, prospectuses, and financial statements of the hospital, or any part thereof, including, but not limited to, income and retained income statements, cash flow statements, and balance sheets, from year ending 2001 through year-to-date for 2010 (the Company need only submit one copy of final year-end documents and cumulative year-to-date documents for the current year);

e. all cost center reports, all profitability reports (for example by health plan and by department), and all other financial reports regularly prepared, from year ending 2001 through year-to-date for 2010; and

f. all metrics of cost and revenue per admission, including, but not limited to, cost and net revenue per Equivalent Inpatient Admission-Case Mix Index (EIPA-CMI) adjusted, and all documents relevant to the evaluation and interpretation of these metrics, from year ending 2001 through year-to-date for 2010.

3. Submit all documents regarding: (a) data or reports submitted to or received from or by quality rating organizations, including, but not limited to, Leapfrog, Society of Thoracic Surgeons, Agency for Healthcare Research and Quality, and National Registry of Myocardial Infarction; (b) quality of patient care initiatives in any area, including, but not limited to, personnel, infrastructure, and equipment; (c) quality assurance or quality improvement systems; and (d) the effect of changes in hospital quality on patient volume and revenue.

4. Submit all documents relating to the Company's or any other person's plans relating to the relevant service in the relevant area including, but not limited to, business plans; short term and long range strategies and objectives; budgets and financial projections; investment banker and other consultant reports; expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, and boards of directors. For business, strategic, and capital plans, and board of directors minutes, submit from year ending 2001 through year-to-date for 2010. For regularly prepared budgets, financial projections, and year- end financial statements, the Company need only submit one copy of final year-end documents and cumulative year-to-date documents for the current year.

5. Provide each financial statement, budget, profit and loss statement, customer or departmental profitability report, and each other financial report regularly prepared by or for the Company on any periodic basis that relates to the relevant service, from year ending 2001 through year-to-date for 2010. Provide all such reports on a monthly, quarterly, or other periodic basis as produced by the Company and on a yearly basis. If available, these reports should be provided in an electronic spreadsheet format acceptable to the Commission.

6. Submit all documents relating to competition for the relevant service in the relevant area including, but not limited to, market studies, forecasts and surveys, and all other documents relating to: (a) the market share or competitive position of the Company or any of its competitors, including discussions of service areas and patient origins; (b) the relative strength or weakness of companies providing the relevant service; (c) supply and demand conditions; (d) attempts to gain or retain individual patients, contracts with health plans, or physicians' patient admissions; (e) allegations by any person that any

hospital is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints, threatened, pending, or completed lawsuits, and federal and state investigations; and (f) any actual or potential effect on the supply, demand, cost, or price of the relevant service as a result of competition from any other possible substitute service.

7. Submit all documents relating to any comparisons of quality, cost, price, variety or breadth of service, or consumer preference between or among any hospitals in the relevant area, including, but not limited to, all documents reporting the results of any surveys regarding consumer or health plan opinions of particular hospitals within the relevant area.

8. Submit all contracts with health plans (including, but not limited to, direct contracts with employer or union health benefit plans) or physician organizations, now in effect or that were in effect at any time on or after January 1, 2004, for the provision of the relevant service to the plan's or organization's enrollees or patients, by any hospital operated by the Company in the relevant area (including, but not limited to, contracts also encompassing other Company health facilities), as well as all other documents relating to the development or negotiation of such contracts (including, but not limited to, communications with health plans, internal Company decisions regarding negotiating positions and proposed and final reimbursement rates, and training manuals or other internal documents that describe the Company's methods and procedures for determining proposed and final reimbursement rates), planned contracts (including, but not limited to, contracts not entered into, not yet finalized or in force, or no longer in force), or contract amendments or modifications. Also provide a description of the ways in which these documents and information sources are used in the rate-setting process; and identify the Company's specific financial and operational benchmarks and requirements that impact the determination of the Company's proposed and final reimbursement rates.

9. Submit all documents relating to:

   a. any actual or planned lease, management contract, or other agreement for the Company to operate a hospital in the relevant area owned in whole or in part by another person (including, but not limited to, documents relating to the Company's or owner's control or influence over the hospital's operations, or possible renewal, extension, modification, or cancellation of the agreement); and

   b. all other formal or informal commercial or operational relationships or affiliations that exist, have existed, or are planned (excluding the relevant transaction) between or among any hospitals, or hospitals and any physician organizations, in the relevant area, including, but not limited to, joint ventures, arrangements for joint purchasing of goods or services, arrangements for the provision of management or consulting services, joint marketing or promotion of services,

purchases by the Company of services from other hospitals or from physician organizations (or vice versa), the sharing of facilities, services, equipment, or personnel, arrangements for any type of hospital or physician referrals, arrangements for emergency backup support for any outpatient facility, and the exchange of information (including, but not limited to, prices).

10. Submit all documents relating to the Company's or any other person's price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions relating to the relevant service in the relevant area.

11. Submit all documents relating to:

    a. requirements for entry into the relevant service in the relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

    b. the total costs required for entry into the provision of the relevant service; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the provision of the relevant service; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;

    c. possible new entrants into the provision of the relevant service in the relevant area; and

    d. the minimum viable scale, the minimum and optimum hospital and doctor/nurse-staff size, capacity utilization rate, volume, requirements for multi-facility, multi-services, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the provision of the relevant service.

12. Submit all documents (except engineering and architectural plans and blueprints) relating to any plans of the Company or any other person for the construction of new facilities, the closing of any existing facilities, or the expansion, conversion, or modification (if such modification has a planned or actual cost of more than $1 million) of current facilities for providing the relevant service in the relevant area.

13. Submit all documents relating to any plans of, interest in, or efforts undertaken by the Company or any other person for any acquisition, divestiture, joint venture, alliance or merger of any kind involving hospitals in the relevant area other than the relevant transaction.

14. Submit all documents relating to contribution margins, or identifying or quantifying fixed costs or variable costs, for the provision of the relevant service (or any subset thereof, such as an individual service or type of customer) by any hospital in the relevant area.

15. Submit all documents analyzing or discussing the effect of any merger, joint venture, acquisition, or consolidation of hospitals in the relevant area, including, but not limited to, the relevant transaction, on the hospitals' prices, costs, margins, services, service quality, or any other aspect of competitive performance, including, but not limited to, documents discussing any expected improvements related to: (a) the quality of care or related quality or safety indices; (b) the availability of modernization or expansion of hospital facilities; (c) the degree of integration of medical services or staff among the merged hospitals; and (d) the accessibility of services to indigent or other populations residing in the hospital's service area.

16. Submit all documents relating to the future viability, gross or net margins, retained surplus, ability to obtain financing for capital improvements, or any other aspect of the financial condition of the hospitals operated by the Company in the relevant area.

17. Submit all documents (except documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues) relating to the proposed joinder of ProMedica with St. Luke's.

18. Submit all information described in Instruction W below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this SDT, to the extent such documentation is not contained in documents submitted in response to this SDT.

19. Submit documents sufficient to show the Company's policies and procedures relating to the retention and destruction of documents.

20. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this SDT and a copy of all instructions prepared by the Company relating to the steps taken to respond to this SDT. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this SDT, the following definitions and instructions apply:

A. The term "the Company" means ProMedica Health System, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. 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 the Company and any other person.

C. 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 Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this SDT. The Commission 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 specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each," "any," and "all" mean "each and every."

H. 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.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means (1) 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, and (2) services provided by any physician organization as defined herein, collectively or individually.

K. The term "relevant area" means the area encompassing the Ohio counties of Lucas, Wood, Fulton, Ottawa, Henry, Sandusky, and Seneca, and the Michigan counties of Lenawee and Monroe.

L. The term "minimum viable scale" means the smallest service volume at which average costs equal the price currently charged for the relevant service. It should be noted that

minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

M. The term "sunk costs" means the acquisition costs of tangible and intangible assets necessary to provide the relevant service that cannot be recovered through the redeployment of these assets for other uses.

N. 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.

O. The term "hospital" means a facility that provides the relevant service as defined herein.

P. 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.

Q. The term "physician organization" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine, such as a physician group.

R. 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.

S. The term "relevant transaction" means the transaction pursuant to which St. Luke's Hospital, St. Luke's Hospital Foundation, Inc., WellCare Physicians Group, LLC, and associated entities, will be integrated into the health care system of ProMedica Health System, Inc.

T. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2007, 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.

U. This SDT shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this SDT produced or obtained by

the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this SDT.

V. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this SDT, 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 SDT, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company 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 Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

W. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

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 Company intends 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 SDT, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this SDT.

4. For each Specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.

5. 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. The Commission will return any infected media for**

replacement, which may affect the timing of the Company's compliance with this SDT.

6. All documents responsive to this SDT, 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 Company 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 the Company 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 Commission 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 Commission representative will provide a sample index upon request.

X. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

1. The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has

already been produced in response to this instruction), noting where redactions in the document have been made.

2. Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this SDT.

3. For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

   (a) The Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

   (b) The Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

   (c) The Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

4. The Company retains all privileged documents that are responsive to SDT until the completion of any investigation of the relevant transaction.

5. The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Z. 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 as disclosed or described in response to Specification 18 of this SDT, but

the Company has 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.

AA. In order for the Company's response to this SDT to be complete, the attached certification form must be executed by the official supervising compliance with this SDT, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this SDT or suggestions for possible modifications thereto should be directed to Jeanne Liu at 202-326-3572. The response to the SDT shall be addressed to the attention of Jeanne Liu, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission. If you wish to submit your response by United States mail, please call one of the staff listed above for mailing instructions.

CERTIFICATION

This response to the Subpoena *Duces Tecum* issued by the Federal Trade Commission was prepared under my supervision in accordance with its Definitions and Instructions. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required information, the information is, to the best of my knowledge, true, correct, and complete.

_____
(Signature)

_____
(Type or print name and title)

_____
(Company name)

Subscribed and sworn to before me at the City of _____,

State of _____, this _____day of _____, 2010

_____
(Notary public)

_____
(Date commission expires)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION

File No. 101-0167

Nature and Scope of Investigation:

To determine whether the proposed acquisition of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC; and all related entities by ProMedica Health System, Inc., violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid transaction, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, et seq. and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Dated: August 9, 2010

Petition Exhibit 5

United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

Paramount Health Care
c/o David Marx, Jr., Esq. / McDermott, Will & Emery LLP
227 W. Monroe Street, Suite 4400
Chicago, IL 60606

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission 601 New Jersey Avenue, N.W. Suite 5255 Washington, DC. 20001	Jeanne Liu or other designated counsel
	DATE AND TIME OF HEARING OR DEPOSITION

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

September 24, 2010

3. SUBJECT OF INVESTIGATION

Proposed Acquisition by ProMedica Health System, Inc., of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC., FTC File No. 101-0167

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	5. COMMISSION COUNSEL
Joan Heim (Records Custodian) Jeanne Liu (Deputy Records Custodian)	Jeanne Liu, Esq. (202) 326-3572

DATE ISSUED	COMMISSIONER'S SIGNATURE
8/25/10	Edith Ramirez

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

CIVIL INVESTIGATIVE DEMAND
ISSUED TO PARAMOUNT HEALTH CARE
FTC File No. 101-0167

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in the Definitions and Instructions which appear after the following Specifications. If the Company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified in this CID. All modifications to this CID must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(c).

SPECIFICATIONS

1. Submit, for each year from 2004 to the present, for each inpatient admission, or outpatient treatment episode, for any patient residing in the relevant area:

   a. the identity of the hospital, healthcare facility, or physician practice at which the patient was treated, including the owner of the hospital, healthcare facility, or physician practice, the address of the hospital, healthcare facility, or physician practice including ZIP code, and any hospital, healthcare facility, or physician practice identification number used for reimbursement purposes;

   b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier);

   c. the patient's residence 5-digit ZIP code;

   d. the patient's age (in years), gender, and race;

   e. whether the treatment episode was inpatient or outpatient, if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;

   f. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;

   g. whether the treatment provided was for an emergency;

   h. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);

   i. the specific name of the entity and type of health plan offered by the Company (such as HMO, POS, PPO, etc.) that was the principal source of payment;

j. for each product listed in Specification 1(i), identify whether this product is offered through a managed care contract with Medicare, Medicaid, or other public health insurance program;

k. whether the hospital, healthcare facility, or physician practice identified in response to Specification 1(a) was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital, healthcare facility, or physician practice was in;

l. whether there was a capitation arrangement with a health plan, if any, covering the patient (identify the arrangement);

m. the billed charges of the hospital, healthcare facility, or physician practice, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan includes any adjustments under any stop-loss provisions, and any additional amounts paid by the patient;

n. any breakdown of the hospital's, healthcare facility's, or physician practice's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU) for which the Company provides reimbursement to the hospital, healthcare facility, or physician practice at different per diem or other rates;

o. the identity of the patient's admitting physician and, if different, the identity of the treating physician;

p. the amount of any reimbursement by the Company to any physicians, separately from any reimbursement to the hospital, healthcare facility, or physician practice for any physician services associated with the admission or treatment, or for any services associated with covered treatments or diagnoses identified in Specification 1(m); and

q. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

2. Identify, for each hospital under contract with the Company in the relevant area since January 1, 2004, and for each such hospital each physician organization under contract with the Company whose contract was negotiated by or in conjunction with the hospital, each person who is or was responsible for the Company's negotiation of contracts with the hospital or physician organization, the health plans or products for which each such person negotiates, and the time periods of that person's responsibilities.

3. Describe, for each health insurance product (such as HMO, POS, PPO, etc.) offered by the Company in the relevant area since January 1, 2004:

   a. the name of the plan as it is referred to in the Company's claims data provided in response to Specification 1;

   b. the number of covered lives in the plan, stated by county, if possible;

   c. the counties in which the plan is offered;

   d. the hospitals and physicians that are included in the plan or are preferred providers in the plan (if the plan is tiered, describe the hospitals and physicians in each tier); and, for each physician, the physician's specialty, employer, and affiliated hospital; and

   e. the services or procedures covered by the plan and, for each service or procedure:

      (i) all deductibles, co-pays, or co-insurance that apply and how these differ across tiers or between preferred and non-preferred providers; and

      (ii) any other inducements offered to plan patients to use certain providers.

4. Submit all information described in Instruction U below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID.

5. Describe in detail the Company's policies and procedures relating to the retention and destruction of documents.

6. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each Specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

A. The term "the Company" means Paramount Health Care, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. 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 the Company and any other person.

C. 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 Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this CID. The Commission 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 specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

(3) If the Company intends to utilize any De-duplication or Near-de-duplication 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 CID, or if the Company's computer systems contain or utilize such software, the Company must contact Commission representatives to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each," "any," and "all" mean "each and every."

H. 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.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means (1) 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, and (2) services provided by any physician group as defined herein, collectively or individually.

K. The term "relevant area" means the area encompassing the Ohio counties of Lucas, Wood, Fulton, Ottawa, Henry, Sandusky, and Seneca, and the Michigan counties of Lenawee and Monroe.

L. 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.

M. The term "hospital" means a facility that provides the relevant service as defined herein.

N. 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.

O. The term "physician group" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine

P. 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.

Q. The term "relevant transaction" means the transaction pursuant to which St. Luke's Hospital, St. Luke's Hospital Foundation, Inc., WellCare Physicians Group, LLC, and associated entities, will be integrated into the healthcare system of ProMedica Health System, Inc.

R. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2007, 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.

S. This CID shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this CID produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this CID.

T. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this CID, 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 CID, SHI includes medical records or other individually identifiable health information. Where required by a particular

specification, the Company 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 Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

U. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

(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 Company intends 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 CID, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

(4) Submit data compilations in Excel spreadsheet or in delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.

(5) 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. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this CID.**

V. All documents responsive to this CID, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(1) 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:

(a) 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

(b) 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;

(2) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(3) 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 Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(4) Shall be marked on each page with corporate identification and consecutive document control numbers;

(5) Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct and complete copies of the original documents; and

(6) Shall be accompanied by an index that identifies: (a) the name of each person from whom responsive documents are submitted; and (b) 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 Commission 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 Commission representative will provide a sample index upon request.

W. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the

privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

(1) The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made.

(2) Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this CID.

(3) For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

(a) the Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

(b) the Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

(c) the Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

(4) The Company shall retain all privileged documents that are responsive to this CID until the completion of any investigation of the relevant transaction.

(5) The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

X. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Y. 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 Company has 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.

Z. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to Jeanne Liu at (202) 326-3572. The response to the CID shall be addressed to the attention of Jeanne Liu, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission's offices at 601 New Jersey Ave N.W., Washington, DC 20001. Please notify the staff listed above in advance of each such delivery. If you wish to submit your response by United States mail, please call the staff listed above for mailing instructions.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

_____ _____

_____
Notary Public

_____

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION

File No. 101-0167

Nature and Scope of Investigation:

To determine whether the proposed acquisition of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC; and all related entities by ProMedica Health System, Inc., violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid transaction, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, et seq. and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Dated: August 9, 2010

Petition Exhibit 6

SUBPOENA DUCES TECUM

1. TO	2. FROM
Paramount Health Care c/o David Marx, Jr., Esq. / McDermott, Will & Emery LLP 227 W. Monroe Street, Suite 4400 Chicago, IL 60606	UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

3. LOCATION OF HEARING	4. YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission 601 New Jersey Avenue, N.W. Suite 5255 Washington, D.C. 20001	Jeanne Liu or other designated counsel
	5. DATE AND TIME OF HEARING OR DEPOSITION September 24, 2010*

6. SUBJECT OF INVESTIGATION

In the matter of the proposed Acquisition by ProMedica Health System, Inc., of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC., FTC File No. 101-0167. See the attached Resolution authorizing use of Compulsory Process.

7. RECORDS YOU MUST BRING WITH YOU

Provide the responses to the specifications of the attachment. *In lieu of personal appearance, you may submit the requested material along with the certification attesting to the completeness of the response.

8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	9. COMMISSION COUNSEL
Joan Heim (Records Custodian) Jeanne Liu (Deputy Records Custodian)	Jeanne Liu, Esq. (202) 326-3572

DATE ISSUED	COMMISSIONER'S SIGNATURE
8/25/10	Edith Ds

GENERAL INSTRUCTIONS

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

SUBPOENA *DUCES TECUM*
ISSUED TO PARAMOUNT HEALTH CARE
FTC File No. 101-0167

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Subpoena *Duces Tecum* ("SDT") requires a complete search of "the Company" as defined in the Definitions and Instructions which appear after the following Specifications. If the Company believes that the required search or any other part of the SDT can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representative identified in this SDT. All modifications to this SDT must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(c). You may find it useful to provide the response to Specification 1 of this SDT promptly and discuss limiting the required search with the Commission's representative before you begin your search.

SPECIFICATIONS

1. Submit one copy of each organization chart and personnel directory in effect for the Company as a whole, and for each of the Company's facilities or divisions involved in any activity relating to the relevant service in the relevant area.

2. Submit, for each year from 2004 to the present, all contracts now in effect or that were in effect at any time since January 1, 2004, with hospitals in the relevant area, and each physician organization under contract with the Company whose contract was negotiated by or in conjunction with any such hospital (such as, but not limited to, a hospital-owned medical group practice, or hospital-affiliated physician-hospital organization), including any amendments or modifications thereto.

3. Submit, for each year from 2004 to the present, all documents relating to the development or negotiation of the contracts identified in response to Specification 2, including, but not limited to, communications with hospitals, internal Company decisions regarding negotiating positions and proposed and final reimbursement rates, computer spreadsheets and programs the Company uses in connection with pricing decisions, training manuals or other internal documents that describe the Company's methods and procedures for determining proposed and final reimbursement rates, planned contracts (including contracts not entered into, not yet finalized or in force, or no longer in force), and amendments or modifications to existing contracts.

4. Submit all documents relating to the impact of hospital and other provider price increases, or the actual or contemplated changes in the composition of a provider network, in the relevant area during the relevant time period, on the price or quality of the health plan products offered by the Company, or other persons, to employers, employees, or other customers.

5. Submit all documents relating to (a) the quality of any hospital in the relevant area, and (b) any comparisons of quality, cost, price, variety or breadth of services, or consumer preference between or among any hospitals in the relevant area.

6. Submit all documents analyzing or discussing the effect of any merger, joint venture, acquisition, consolidation, or divestiture of hospitals in the relevant area, including both the relevant transaction and other transactions, on the hospitals' prices, costs, services, quality, or any other aspect of competitive performance, including, but not limited to, documents comparing the actual cost savings or other benefits of such transactions to those previously projected, and documents discussing how such benefits were or might be achieved.

7. Submit all information described in Instruction U below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this SDT, to the extent such documentation is not contained in documents submitted in response to this SDT.

8. Submit documents sufficient to show in detail the Company's policies and procedures relating to the retention and destruction of documents.

9. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this SDT and a copy of all instructions prepared by the Company relating to the steps taken to respond to this SDT. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each Specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this SDT, the following definitions and instructions apply:

A. The term "the Company" means Paramount Health Care, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. 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 the Company and any other person.

C. 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 Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this SDT. The Commission 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 specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

(3) If the Company intends to utilize any De-duplication or Near-de-duplication 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 SDT, or if the Company's computer systems contain or utilize such software, the Company must contact Commission representatives to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this SDT.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each," "any," and "all" mean "each and every."

H. 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.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means (1) 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, and (2) services provided by any physician group as defined herein, collectively or individually.

K. The term "relevant area" means the area encompassing the Ohio counties of Lucas, Wood, Fulton, Ottawa, Henry, Sandusky, and Seneca, and the Michigan counties of Lenawee and Monroe.

L. 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.

M. The term "hospital" means a facility that provides the relevant service as defined herein.

N. 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.

O. The term "physician group" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine

P. 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.

Q. The term "relevant transaction" means the transaction pursuant to which St. Luke's Hospital, St. Luke's Hospital Foundation, Inc., WellCare Physicians Group, LLC, and associated entities, will be integrated into the healthcare system of ProMedica Health System, Inc.

R. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2007, 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.

S. This SDT shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this SDT produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this SDT.

T. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this SDT, 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 SDT, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company 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 Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

U. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

(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 Company intends 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 SDT, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what

manner the Company may use such software or services when producing materials in response to this SDT.

(4) Submit data compilations in Excel spreadsheet or in delimited text formats, with all underlying data un-redacted and all underlying formulas and algorithms intact.

(5) 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. The Commission will return any infected media for replacement, which may affect the timing of the Company's compliance with this SDT.**

V. All documents responsive to this SDT, regardless of format or form and regardless of whether submitted in hard copy or electronic format:

(1) 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:

(a) 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

(b) 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;

(2) If written in a language other than English, shall be translated into English, with the English translation attached to the foreign language document;

(3) 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 Company must submit the original document, a like-colored photocopy, or a JPEG format image);

(4) Shall be marked on each page with corporate identification and consecutive document control numbers;

(5) Shall be accompanied by an affidavit of an officer of the Company stating that the copies are true, correct and complete copies of the original documents; and

(6) Shall be accompanied by an index that identifies: (a) the name of each person from whom responsive documents are submitted; and (b) 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 Commission 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 Commission representative will provide a sample index upon request.

W. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

(1) The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all nonprivileged portions of any responsive document (including nonprivileged or redactable attachments) for which a claim of privilege is asserted (except where the only nonprivileged information has already been produced in response to this instruction), noting where redactions in the document have been made.

(2) Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this SDT.

(3) For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

   (a) the Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

   (b) the Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

   (c) the Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

(4) The Company shall retain all privileged documents that are responsive to this SDT until the completion of any investigation of the relevant transaction.

(5) The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

X. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Y. 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 Company has 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.

Z. In order for the Company's response to this SDT to be complete, the attached certification form must be executed by the official supervising compliance with this SDT, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this SDT or suggestions for possible modifications thereto should be directed to Jeanne Liu at (202) 326-3572. The response to the SDT shall be addressed to the attention of Jeanne Liu, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission's offices at 601 New Jersey Ave N.W., Washington, DC 20001. Please notify the staff listed above in advance of each such delivery. If you wish to submit your response by United States mail, please call the staff listed above for mailing instructions.

CERTIFICATION

This response to the Subpoena *Duces Tecum* issued by the Federal Trade Commission was prepared under my supervision in accordance with its Definitions and Instructions. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required information, the information is, to the best of my knowledge, true, correct, and complete.

_____
(Signature)

_____
(Type or print name and title)

_____
(Company name)

Subscribed and sworn to before me at the City of _____,

State of _____, this _____day of _____, 2010

_____
(Notary public)

_____
(Date commission expires)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION

File No. 101-0167

Nature and Scope of Investigation:

To determine whether the proposed acquisition of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC; and all related entities by ProMedica Health System, Inc., violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid transaction, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, et seq. and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Dated: August 9, 2010

Petition Exhibit 7

United States of America
Federal Trade Commission

CIVIL INVESTIGATIVE DEMAND

1. TO

St. Luke's Hospital
c/o John J. Eklund, Counsel
1400 KeyBank Center, 800 Superior Avenue
Cleveland, OH 44114-2688

This demand is issued pursuant to Section 20 of the Federal Trade Commission Act, 15 U.S.C. § 57b-1, in the course of an investigation to determine whether there is, has been, or may be a violation of any laws administered by the Federal Trade Commission by conduct, activities or proposed action as described in Item 3.

2. ACTION REQUIRED

☐ You are required to appear and testify.

LOCATION OF HEARING	YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission 601 New Jersey Avenue, N.W. Suite 5255 Washington, DC. 20001	Jeanne Liu or other designated counsel
	DATE AND TIME OF HEARING OR DEPOSITION

☒ You are required to produce all documents described in the attached schedule that are in your possession, custody, or control, and to make them available at your address indicated above for inspection and copying or reproduction at the date and time specified below.

☒ You are required to answer the interrogatories or provide the written report described on the attached schedule. Answer each interrogatory or report separately and fully in writing. Submit your answers or report to the Records Custodian named in Item 4 on or before the date specified below.

DATE AND TIME THE DOCUMENTS MUST BE AVAILABLE

September 24, 2010

3. SUBJECT OF INVESTIGATION

Proposed Acquisition by ProMedica Health System, Inc., of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC., FTC File No. 101-0167

4. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	5. COMMISSION COUNSEL
Joan Heim (Records Custodian) Jeanne Liu (Deputy Records Custodian)	Jeanne Liu, Esq. (202) 326-3572

DATE ISSUED	COMMISSIONER'S SIGNATURE
8/25/10	Edith Ramirez

INSTRUCTIONS AND NOTICES

The delivery of this demand to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply. The production of documents or the submission of answers and report in response to this demand must be made under a sworn certificate, in the form printed on the second page of this demand, by the person to whom this demand is directed or, if not a natural person, by a person or persons having knowledge of the facts and circumstances of such production or responsible for answering each interrogatory or report question. This demand does not require approval by OMB under the Paperwork Reduction Act of 1980.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this demand be filed within 20 days after service, or, if the return date is less than 20 days after service, prior to the return date. The original and twelve copies of the petition must be filed with the Secretary of the Federal Trade Commission, and one copy should be sent to the Commission Counsel named in Item 5.

YOUR RIGHTS TO REGULATORY ENFORCEMENT FAIRNESS

The FTC has a longstanding commitment to a fair regulatory enforcement environment. If you are a small business (under Small Business Administration standards), you have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR (1-888-734-3247) or www.sba.gov/ombudsman regarding the fairness of the compliance and enforcement activities of the agency. You should understand, however, that the National Ombudsman cannot change, stop, or delay a federal agency enforcement action.

The FTC strictly forbids retaliatory acts by its employees, and you will not be penalized for expressing a concern about these activities.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this demand should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this demand and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

CIVIL INVESTIGATIVE DEMAND
ISSUED TO ST. LUKE'S HOSPITAL
FTC File No. 101-0167

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Civil Investigative Demand ("CID") requires a complete search of "the Company" as defined in the Definitions and Instructions, which appear after the following Specifications. If the Company believes that the required search or any other part of the CID can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representatives identified in this CID. All modifications to this CID must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(c).

SPECIFICATIONS

1.* Submit for each hospital operated by the Company in the relevant area:

a. for each month, the total patient days, patient discharges, inpatient gross revenue, and inpatient net revenue for the hospital as a whole and by individual department;

b. for each year, outpatient visits, outpatient gross revenue, and outpatient net revenue for:

(i) emergency room visits, and

(ii) all other procedures.

c. the total number of licensed, available, and staffed beds on the first day of each year, and the average daily census for each year, separately for the hospital as a whole and for the relevant service;

d. for each year, and separately for the hospital as a whole and for the relevant service (broken down between inpatient and outpatient services), the dollar amount of the hospital's revenues received from, and the number of inpatients, inpatient days, and outpatient treatment episodes where the principal source of payment was each of the following sources:

(i) Medicare;

(ii) Medicaid;

(iii) any other health plan (provide data both for all such plans combined, and separately for: (A) each such health plan from which the hospital derives more than 1% of its revenues; and (B) total revenues from all such health

plans with which the hospital has contracts providing for reimbursement rates differing from standard charges of the hospital);

(iv) patients (out-of-pocket);

(v) no source of payment ("charity care" patients treated free of charge);

(vi) bad debt; and

(vii) any other source (identify, and provide dollar amounts separately for, any source from which the hospital derives more than 1% of its revenues).

e. a list provided both in hard copy and as computer file(s) showing, for each physician or other health professional who has held professional staff privileges at the hospital:

(i) name;

(ii) current (or last known) office address;

(iii) medical specialty;

(iv) medical practice group (if any);

(v) professional license number;

(vi) any other uniform physician identification number;

(vii) type of staff privileges currently or most recently held;

(viii) each other hospital at which he or she holds (or most recently held) professional staff privileges and the type of privileges held at each hospital;

(ix) the time period during which he or she held admitting privileges at the hospital;

(x) his or her employer(s), if any, during the time period during which he or she held admitting privileges at the hospital, and the time period he or she was employed by each employer; and

(xi) the number of inpatients, and the number of outpatients, he or she admitted to the hospital in each year.

f. a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred from another hospital, the transferring hospital, the date the patient was transferred, the residence 5-digit ZIP code of the patient, any diagnosis codes, length of stay, revenues for that admission, and the reason for the transfer;

g. a list provided both in hard copy and as computer file(s) showing for each year, for each patient transferred to another hospital, the transferee hospital, the date the patient was transferred, the residence 5-digit ZIP code, any diagnosis codes, and the reason for the transfer;

h. a list provided both in hard copy and as computer file(s) showing for each year, each day on which the hospital went on diversion (*i.e.,* refused to admit additional patients), the reason for each diversion, and the patient census of the hospital on the day the diversion occurred;

i. the current nominal and practical capacity, and the annual capacity utilization rate, of the hospital (specifying all other factors used to calculate capacity), and the feasibility of increasing capacity, including the costs and time required;

j. the principles used by the Company for accounting for contractual allowances and bad debt; the criteria used to determine which accounts receivable are recorded as bad debt; and the circumstances, if any, under which bad debt or contractual allowances are attributed to charity care or some similar account; and

k. for each year the amounts of bad debt and charity care recorded by the Company for each hospital in the relevant area and the amount of bad debt that was re-recorded as charity care.

2. Submit the identity of:

a. each physician organization owned or managed by the Company, and for each such organization:

(i) the physician organization's specialty or specialties;

(ii) the doctors in the physician organization; and

(iii) the billing rates of each doctor in the physician organization.

b. each entity in the relevant area in which the Company

(i) holds 50 percent or more of the outstanding voting securities of an issuer or, in the case of an unincorporated entity, has the right to 50 percent or more of the profits of the entity, or has the right in the event of dissolution to 50 percent or more of the assets of the entity; or

(ii) has the contractual power presently to designate 50 percent or more of the directors of a for-profit or not-for-profit corporation, or in the case of trusts, the trustees of such a trust.

c. each entity not identified in part (b) above for which the Company has an ownership interest, and for each entity submit a description of:

(i) the Company's ownership interest;

(ii) any agreement between the Company and the entity that relates to the Company's ownership in the entity submitting any such documents; and

(iii) the persons who, pursuant to an agreement between the Company and the entity, have served as officers of the entity, board members of the entity, or in any other position with the entity.

3. Submit, for each year from 2004 to the present, for any inpatient admission or discharge or outpatient treatment episode at any hospital operated by the Company in the relevant area:

a. the identity of the hospital at which the patient was treated, the address of the hospital, including 5-digit ZIP code, and any hospital identification number used for reimbursement purposes;

b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier as specified in Instruction V); if the Company is providing data in multiple records for the inpatient admission or outpatient visit, a unique identifier for the admission or visit shall also be included in each record associated with the admission or visit;

c. the patient's residence 5-digit ZIP code;

d. the patient's age (in years) and gender (if the patient age is 90 years or older the Company should so indicate, in lieu of providing the patient's age);

e. whether the treatment episode was inpatient or outpatient; if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;

f. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;

g. all UB92 revenue codes and revenue code units;

h. whether the treatment provided was for an emergency;

i. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);

j. the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment;

k. identify whether the type of health plan that was the principal source of payment was offered through the Medicare Advantage program;

l. whether the Company was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital was in;

m. whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;

n. charges of the hospital, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan including any adjustments under any stop-loss provisions or any other contractual provision, and any additional amounts paid by the patient;

o. any breakdown of the hospital's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU);

p. the identity of the patient's admitting physician and, if different, the identity of the treating physician;

q. the amount of any payment by the Company to any physicians, not including any payment received in connection with employment by the Company, for any physician services associated with admission or treatment at the Company's hospitals; and

r. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

4. Identify, provide the title, and describe the contents of each financial statement, budget, profit and loss statement, customer or departmental profitability report, and each other financial report regularly prepared by or for the Company on any periodic basis that relates to the relevant service, from year ending 2001 through year-to-date for 2010, and for each such report, state how often each is prepared and the person responsible for its preparation.

5. Submit, by hospital, Company-generated descriptions, summaries, and interpretations of contract terms and methodologies (including, but not limited to, per diem formulas, discount of charges formulas, stop loss provisions or any other formulas, codes, or templates containing the relevant terms of the contract between the hospital and health plans), that affect the total consideration any Company-owned or Company-affiliated hospital in the relevant area received or will receive under a contract with a health plan in effect at any time during the time period beginning January 1, 2004.

6. Identify for each hospital operated by the Company in the relevant area each person who is now or, since January 1, 2004, was responsible for the Company's negotiation of contracts with health plans or physician organizations, the entities for which each such person negotiates, and the time periods of that person's responsibilities.

7. State the name and address of each person that has entered or attempted to enter into, or exited from, the provision of the relevant service in the relevant area from January 1, 2000, to the present. For each such person, identify the date of its entry into or exit from the market. For each entrant, state whether the entrant built a new facility, converted assets previously used for another purpose (identifying that purpose), or began using facilities that were already being used for the same purpose.

8. Identify or describe (including the basis for your response) the following:

a. requirements for entry into the relevant service in the relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

b. the total costs required for entry into the provision of the relevant service; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the provision of the relevant service; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;

c. possible new entrants into the provision of the relevant service in the relevant area; and

d. the minimum viable scale, the minimum and optimum hospital and doctor/nurse-staff size, capacity utilization rate, volume, requirements for multi-facility, multi-services, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the provision of the relevant service.

9. List each of the Company's prior acquisitions, affiliations, joint ventures, or similar transactions, and describe each efficiency (including cost savings, economies, new product or service introductions, and product or service improvements) that was expected to be achieved, that has been actually achieved, or is in the process of being achieved from each such transaction, including in the description:

a. the steps that the Company took to achieve the efficiency and the time and costs required to achieve it;

b. the dollar value of the efficiency and a detailed explanation of how that was calculated;

c. an explanation of how each prior transaction helped the Company achieve the efficiency;

d. the reason(s) the Company could not have achieved the efficiency without the prior transaction;

e. the proportion of the dollar value of the efficiency that the company passed on to consumers and the manner and form (e.g., lower prices, better service) in which the company passed on the efficiency;

f. the identity of each person (including the person's title, telephone number, and business address) employed or retained by the company (including the company's counsel) with any responsibility for achieving, analyzing, or quantifying any efficiency described; and

g. for each efficiency that involved cost savings, state separately:

(i) the one-time fixed cost savings; and

(ii) the variable cost savings (in dollars per unit and dollars per year).

10. Provide:

    a. a timetable for the proposed joinder, a description of all actions that must be taken prior to consummation of the proposed joinder, and any harm that will result if the joinder is not consummated;

    b. a detailed description of (including the rationale for, and identification of all documents directly or indirectly used to prepare the company's response to this sub-part) all plans for changes in ProMedica's and St. Luke's operations, structure, policies, strategies, corporate goals, financing, business, officers, employees or any other area of corporate activity as a result of the proposed joinder;

    c. a detailed description of (including the identification of all documents directly or indirectly used to prepare the company's response to this sub-part and quantification, if possible, of all cost savings, economies or other efficiencies) the reasons for the proposed joinder, and the benefits, costs, and risks anticipated as a result of the proposed joinder, including, but not limited to, all cost savings, economies, or other efficiencies of whatever kind;

    d. a detailed description of the reasons why the company could not achieve each benefit, cost saving, economy, or other efficiency without the proposed joinder; and

    e. a detailed description of all statements or actions by any person (identifying the person by name, title, phone number, and business address) in support of, in opposition to, or otherwise expressing opinions about the proposed joinder or its effects.

11. Submit all information described in Instruction W below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this CID, to the extent such documentation is not contained in documents submitted in response to this CID.

12. Describe in detail the Company's policies and procedures relating to the retention and destruction of documents.

13. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this CID and a copy of all instructions prepared by the Company relating to the steps taken to respond to this CID. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this CID, the following definitions and instructions apply:

A. The term "the Company" means St. Luke's Hospital, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. 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 the Company and any other person.

C. 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 Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this CID. The Commission 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 specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each," "any," and "all" mean "each and every."

H. 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.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means (1) 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, and (2) services provided by any physician organization as defined herein, collectively or individually.

K. The term "relevant area" means the area encompassing the Ohio counties of Lucas, Wood, Fulton, Ottawa, Henry, Sandusky, and Seneca, and the Michigan counties of Lenawee and Monroe.

L. The term "minimum viable scale" means the smallest service volume at which average costs equal the price currently charged for the relevant service. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

M. The term "sunk costs" means the acquisition costs of tangible and intangible assets necessary to provide the relevant service that cannot be recovered through the redeployment of these assets for other uses.

N. 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.

O. The term "hospital" means a facility that provides the relevant service as defined herein.

P. 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.

Q. The term "physician organization" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine, such as a physician group.

R. 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.

S. The term "relevant transaction" means the transaction pursuant to which St. Luke's Hospital, St. Luke's Hospital Foundation, Inc., WellCare Physicians Group, LLC, and associated entities, will be integrated into the health care system of ProMedica Health System, Inc.

T. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2007, 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.

U. This CID shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this CID produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this CID.

V. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this CID, 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 CID, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company 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 Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

W. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

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 Company intends 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 CID, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this CID.

4. For each Specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.

5. 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. The Commission will return any infected media for**

replacement, which may affect the timing of the Company's compliance with this CID.

6. All documents responsive to this CID, 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 Company 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 the Company 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 Commission 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 Commission representative will provide a sample index upon request.

X. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

1. The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has

already been produced in response to this instruction), noting where redactions in the document have been made.

2. Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this CID.

3. For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

   (a) The Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

   (b) The Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

   (c) The Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

4. The Company retains all privileged documents that are responsive to CID until the completion of any investigation of the relevant transaction.

5. The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Z. 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 as disclosed or described in response to Specification 11 of this CID, but

the Company has 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.

AA. In order for the Company's response to this CID to be complete, the attached certification form must be executed by the official supervising compliance with this CID, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this CID or suggestions for possible modifications thereto should be directed to Jeanne Liu at 202-326-3572. The response to the CID shall be addressed to the attention of Jeanne Liu, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission. If you wish to submit your response by United States mail, please call one of the staff listed above for mailing instructions.

Form of Certificate of Compliance*

I/We do certify that all of the documents and information required by the attached Civil Investigative Demand which are in the possession, custody, control, or knowledge of the person to whom the demand is directed have been submitted to a custodian named herein.

If a document responsive to this Civil Investigative Demand has not been submitted, the objections to its submission and the reasons for the objection have been stated.

If an interrogatory or a portion of the request has not been fully answered or a portion of the report has not been completed, the objections to such interrogatory or uncompleted portion and the reasons for the objections have been stated.

Signature _____

Title _____

Sworn to before me this day

_____ _____

_____
Notary Public

_____

*In the event that more than one person is responsible for complying with this demand, the certificate shall identify the documents for which each certifying individual was responsible. In place of a sworn statement, the above certificate of compliance may be supported by an unsworn declaration as provided for by 28 U.S.C. § 1746.

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION

File No. 101-0167

Nature and Scope of Investigation:

To determine whether the proposed acquisition of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC; and all related entities by ProMedica Health System, Inc., violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid transaction, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, et seq. and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Dated: August 9, 2010

Petition Exhibit 8

SUBPOENA DUCES TECUM

1. TO	2. FROM
St. Luke's Hospital c/o John J. Eklund, Counsel 1400 KeyBank Center, 800 Superior Avenue Cleveland, OH 44114-2688	UNITED STATES OF AMERICA FEDERAL TRADE COMMISSION

This subpoena requires you to appear and testify at the request of the Federal Trade Commission at a hearing [or deposition] in the proceeding described in Item 6.

3. LOCATION OF HEARING	4. YOUR APPEARANCE WILL BE BEFORE
Federal Trade Commission 601 New Jersey Avenue, N.W. Suite 5255 Washington, D.C. 20001	Jeanne Liu or other designated counsel
	5. DATE AND TIME OF HEARING OR DEPOSITION September 24, 2010*

6. SUBJECT OF INVESTIGATION

In the matter of the proposed Acquisition by ProMedica Health System, Inc., of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC., FTC File No. 101-0167. See the attached Resolution authorizing use of Compulsory Process.

7. RECORDS YOU MUST BRING WITH YOU

Provide the responses to the specifications of the attachment. *In lieu of personal appearance, you may submit the requested material along with the certification attesting to the completeness of the response.

8. RECORDS CUSTODIAN/DEPUTY RECORDS CUSTODIAN	9. COMMISSION COUNSEL
Joan Heim (Records Custodian) Jeanne Liu (Deputy Records Custodian)	Jeanne Liu, Esq. (202) 326-3572

DATE ISSUED	COMMISSIONER'S SIGNATURE
8/25/10	Eliza P. J.

GENERAL INSTRUCTIONS

The delivery of this subpoena to you by any method prescribed by the Commission's Rules of Practice is legal service and may subject you to a penalty imposed by law for failure to comply.

PETITION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any petition to limit or quash this subpoena be filed within 20 days after service or, if the return date is less than 20 days after service, prior to the return date. The original and ten copies of the petition must be filed with the Secretary of the Federal Trade Commission. Send one copy to the Commission Counsel named in Item 9.

TRAVEL EXPENSES

Use the enclosed travel voucher to claim compensation to which you are entitled as a witness for the Commission. The completed travel voucher and this subpoena should be presented to Commission Counsel for payment. If you are permanently or temporarily living somewhere other than the address on this subpoena and it would require excessive travel for you to appear, you must get prior approval from Commission Counsel.

This subpoena does not require approval by OMB under the Paperwork Reduction Act of 1980.

SUBPOENA *DUCES TECUM*
ISSUED TO ST. LUKE'S HOSPITAL
FTC File No. 101-0167

Unless modified by agreement with the staff of the Federal Trade Commission, each Specification of this Subpoena *Duces Tecum* ("SDT") requires a complete search of "the Company" as defined in the Definitions and Instructions, which appear after the following Specifications. If the Company believes that the required search or any other part of the SDT can be narrowed in any way that is consistent with the Commission's need for information, you are encouraged to discuss such questions and possible modifications with the Commission representatives identified in this SDT. All modifications to this SDT must be agreed to in writing pursuant to the Commission's Rules of Practice, 16 C.F.R. § 2.7(c). You may find it useful to provide the response to Specification 1 of this SDT promptly and discuss limiting the required search with the Commission's representatives before you begin your search.

SPECIFICATIONS

1. Submit (a) one copy of each organization chart and personnel directory for the Company as a whole and for each of the Company's facilities or divisions involved in any activity relating to the relevant service in the relevant area and (b) 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 the relevant service covered by this SDT (excluding those retained solely in connection with environmental, tax, human resources, pensions, benefits, ERISA, or OSHA issues).

2. Submit for each hospital operated by the Company in the relevant area:

   a. the current bylaws and any rules or regulations of the hospital's professional staff or any department or sub-unit thereof;

   b. a copy of each completed questionnaire submitted by the hospital to the American Hospital Association in connection with its Annual Survey of Hospitals, and to any other association or government agency, in connection with any annual or other periodic survey of hospitals;

   c. a copy of each report prepared by the Joint Commission of Accreditation of Hospitals, or any other accreditation agency, in connection with accreditation of the hospital;

   d. all annual reports, prospectuses, and financial statements of the hospital, or any part thereof, including, but not limited to, income and retained income statements, cash flow statements, and balance sheets, from year ending 2001 through year-to-date for 2010 (the Company need only submit one copy of final year-end documents and cumulative year-to-date documents for the current year);

e. all cost center reports, all profitability reports (for example by health plan and by department), and all other financial reports regularly prepared, from year ending 2001 through year-to-date for 2010; and

f. all metrics of cost and revenue per admission, including, but not limited to, cost and net revenue per Equivalent Inpatient Admission-Case Mix Index (EIPA-CMI) adjusted, and all documents relevant to the evaluation and interpretation of these metrics, from year ending 2001 through year-to-date for 2010.

3. Submit all documents regarding: (a) data or reports submitted to or received from or by quality rating organizations, including, but not limited to, Leapfrog, Society of Thoracic Surgeons, Agency for Healthcare Research and Quality, and National Registry of Myocardial Infarction; (b) quality of patient care initiatives in any area, including, but not limited to, personnel, infrastructure, and equipment; (c) quality assurance or quality improvement systems; and (d) the effect of changes in hospital quality on patient volume and revenue.

4. Submit all documents relating to the Company's or any other person's plans relating to the relevant service in the relevant area including, but not limited to, business plans; short term and long range strategies and objectives; budgets and financial projections; investment banker and other consultant reports; expansion or retrenchment plans; research and development efforts; and presentations to management committees, executive committees, and boards of directors. For business, strategic, and capital plans, and board of directors minutes, submit from year ending 2001 through year-to-date for 2010. For regularly prepared budgets, financial projections, and year- end financial statements, the Company need only submit one copy of final year-end documents and cumulative year-to-date documents for the current year.

5. Provide each financial statement, budget, profit and loss statement, customer or departmental profitability report, and each other financial report regularly prepared by or for the Company on any periodic basis that relates to the relevant service, from year ending 2001 through year-to-date for 2010. Provide all such reports on a monthly, quarterly, or other periodic basis as produced by the Company and on a yearly basis. If available, these reports should be provided in an electronic spreadsheet format acceptable to the Commission.

6. Submit all documents relating to competition for the relevant service in the relevant area including, but not limited to, market studies, forecasts and surveys, and all other documents relating to: (a) the market share or competitive position of the Company or any of its competitors, including discussions of service areas and patient origins; (b) the relative strength or weakness of companies providing the relevant service; (c) supply and demand conditions; (d) attempts to gain or retain individual patients, contracts with health plans, or physicians' patient admissions; (e) allegations by any person that any

hospital is not behaving in a competitive manner, including, but not limited to, customer and competitor complaints, threatened, pending, or completed lawsuits, and federal and state investigations; and (f) any actual or potential effect on the supply, demand, cost, or price of the relevant service as a result of competition from any other possible substitute service.

7. Submit all documents relating to any comparisons of quality, cost, price, variety or breadth of service, or consumer preference between or among any hospitals in the relevant area, including, but not limited to, all documents reporting the results of any surveys regarding consumer or health plan opinions of particular hospitals within the relevant area.

8. Submit all contracts with health plans (including, but not limited to, direct contracts with employer or union health benefit plans) or physician organizations, now in effect or that were in effect at any time on or after January 1, 2004, for the provision of the relevant service to the plan's or organization's enrollees or patients, by any hospital operated by the Company in the relevant area (including, but not limited to, contracts also encompassing other Company health facilities), as well as all other documents relating to the development or negotiation of such contracts (including, but not limited to, communications with health plans, internal Company decisions regarding negotiating positions and proposed and final reimbursement rates, and training manuals or other internal documents that describe the Company's methods and procedures for determining proposed and final reimbursement rates), planned contracts (including, but not limited to, contracts not entered into, not yet finalized or in force, or no longer in force), or contract amendments or modifications. Also provide a description of the ways in which these documents and information sources are used in the rate-setting process; and identify the Company's specific financial and operational benchmarks and requirements that impact the determination of the Company's proposed and final reimbursement rates.

9. Submit all documents relating to:

   a. any actual or planned lease, management contract, or other agreement for the Company to operate a hospital in the relevant area owned in whole or in part by another person (including, but not limited to, documents relating to the Company's or owner's control or influence over the hospital's operations, or possible renewal, extension, modification, or cancellation of the agreement); and

   b. all other formal or informal commercial or operational relationships or affiliations that exist, have existed, or are planned (excluding the relevant transaction) between or among any hospitals, or hospitals and any physician organizations, in the relevant area, including, but not limited to, joint ventures, arrangements for joint purchasing of goods or services, arrangements for the provision of management or consulting services, joint marketing or promotion of services,

purchases by the Company of services from other hospitals or from physician organizations (or vice versa), the sharing of facilities, services, equipment, or personnel, arrangements for any type of hospital or physician referrals, arrangements for emergency backup support for any outpatient facility, and the exchange of information (including, but not limited to, prices).

10. Submit all documents relating to the Company's or any other person's price lists, pricing plans, pricing policies, pricing forecasts, pricing strategies, pricing analyses, and pricing decisions relating to the relevant service in the relevant area.

11. Submit all documents relating to:

    a. requirements for entry into the relevant service in the relevant area including, but not limited to, research and development, planning and design, production requirements, distribution systems, service requirements, patents, licenses, sales and marketing activities, and any necessary governmental and customer approvals, and the time necessary to meet each such requirement;

    b. the total costs required for entry into the provision of the relevant service; the amount of such costs that would be recoverable if the entrant were unsuccessful or elected to exit the provision of the relevant service; the methods and amount of time necessary to recover such costs; and the total sunk costs entailed in satisfying the requirements for entry;

    c. possible new entrants into the provision of the relevant service in the relevant area; and

    d. the minimum viable scale, the minimum and optimum hospital and doctor/nurse-staff size, capacity utilization rate, volume, requirements for multi-facility, multi-services, or vertically integrated operations, or other factors required to attain any available cost savings or other efficiencies necessary to compete profitably in the provision of the relevant service.

12. Submit all documents (except engineering and architectural plans and blueprints) relating to any plans of the Company or any other person for the construction of new facilities, the closing of any existing facilities, or the expansion, conversion, or modification (if such modification has a planned or actual cost of more than $1 million) of current facilities for providing the relevant service in the relevant area.

13. Submit all documents relating to any plans of, interest in, or efforts undertaken by the Company or any other person for any acquisition, divestiture, joint venture, alliance or merger of any kind involving hospitals in the relevant area other than the relevant transaction.

14. Submit all documents relating to contribution margins, or identifying or quantifying fixed costs or variable costs, for the provision of the relevant service (or any subset thereof, such as an individual service or type of customer) by any hospital in the relevant area.

15. Submit all documents analyzing or discussing the effect of any merger, joint venture, acquisition, or consolidation of hospitals in the relevant area, including, but not limited to, the relevant transaction, on the hospitals' prices, costs, margins, services, service quality, or any other aspect of competitive performance, including, but not limited to, documents discussing any expected improvements related to: (a) the quality of care or related quality or safety indices; (b) the availability of modernization or expansion of hospital facilities; (c) the degree of integration of medical services or staff among the merged hospitals; and (d) the accessibility of services to indigent or other populations residing in the hospital's service area.

16. Submit all documents relating to the future viability, gross or net margins, retained surplus, ability to obtain financing for capital improvements, or any other aspect of the financial condition of the hospitals operated by the Company in the relevant area.

17. Submit all documents (except documents solely relating to environmental, tax, human resources, OSHA, or ERISA issues) relating to the proposed joinder of ProMedica with St. Luke's.

18. Submit all information described in Instruction W below relating to, and other instructions necessary for the Commission to use or interpret, the databases or other data compilations submitted in response to this SDT, to the extent such documentation is not contained in documents submitted in response to this SDT.

19. Submit documents sufficient to show the Company's policies and procedures relating to the retention and destruction of documents.

20. Submit the name(s) and title(s) of the person(s) responsible for preparing the response to this SDT and a copy of all instructions prepared by the Company relating to the steps taken to respond to this SDT. Where oral instructions were given, identify the person who gave the instructions and describe the content of the instructions and the person(s) to whom the instructions were given. For each specification, identify the individual(s) who assisted in the preparation of the response, with a listing of the persons (identified by name and corporate title or job description) whose files were searched by each.

DEFINITIONS AND INSTRUCTIONS

For the purposes of this SDT, the following definitions and instructions apply:

A. The term "the Company" means St. Luke's Hospital, its domestic and foreign parents, predecessors, divisions, subsidiaries, affiliates, partnerships and joint ventures, and all directors, officers, employees, agents, and representatives of the foregoing.

B. 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 the Company and any other person.

C. 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 Commission's need for documents and information, you are encouraged to discuss a possible modification to this instruction with the Commission representatives identified on the last page of this SDT. The Commission 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 specifications identified by Commission representatives; or

(c) include other proposals consistent with Commission policy and the facts of the case.

D. The term "person" includes the Company and means any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

E. The term "relating to" means in whole or in part constituting, containing, concerning, discussing, describing, analyzing, identifying, or stating.

F. The terms "and" and "or" have both conjunctive and disjunctive meanings.

G. The terms "each," "any," and "all" mean "each and every."

H. 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.

I. The term "plans" means tentative and preliminary proposals, recommendations, or considerations, whether or not finalized or authorized, as well as those that have been adopted.

J. The term "relevant service" means (1) 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, and (2) services provided by any physician organization as defined herein, collectively or individually.

K. The term "relevant area" means the area encompassing the Ohio counties of Lucas, Wood, Fulton, Ottawa, Henry, Sandusky, and Seneca, and the Michigan counties of Lenawee and Monroe.

L. The term "minimum viable scale" means the smallest service volume at which average costs equal the price currently charged for the relevant service. It should be noted that minimum viable scale differs from the concept of minimum efficient scale, which is the smallest scale at which average costs are minimized.

M. The term "sunk costs" means the acquisition costs of tangible and intangible assets necessary to provide the relevant service that cannot be recovered through the redeployment of these assets for other uses.

N. 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.

O. The term "hospital" means a facility that provides the relevant service as defined herein.

P. 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.

Q. The term "physician organization" means a bona fide, integrated firm in which physicians practice medicine together as partners, shareholders, owners, or employees, or in which only one physician practices medicine, such as a physician group.

R. 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.

S. The term "relevant transaction" means the transaction pursuant to which St. Luke's Hospital, St. Luke's Hospital Foundation, Inc., WellCare Physicians Group, LLC, and associated entities, will be integrated into the health care system of ProMedica Health System, Inc.

T. All references to year refer to calendar year. Unless otherwise specified, each of the specifications calls for documents and/or information for each of the years from January 1, 2007, 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.

U. This SDT shall be deemed continuing in nature so as to require production of all documents responsive to any specification included in this SDT produced or obtained by the Company up to forty-five (45) calendar days prior to the date of the Company's full compliance with this SDT.

V. To protect patient privacy, the Company shall mask any Sensitive Personally Identifiable Information ("PII") or Sensitive Health Information ("SHI"). For purposes of this SDT, 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 SDT, SHI includes medical records or other individually identifiable health information. Where required by a particular specification, the Company 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 Company shall redact the PII or SHI but is not required to replace it with an alternate identifier.

W. Forms of Production: The Company shall submit documents as instructed below absent written consent signed by an Assistant Director of the Commission's Bureau of Competition.

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 Company intends 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 SDT, or if the Company's computer systems contain or utilize such software, the Company must contact a Commission representative to determine, with the assistance of the appropriate government technical officials, whether and in what manner the Company may use such software or services when producing materials in response to this SDT.

4. For each Specification marked with an asterisk (*), and to the extent any other responsive data exists electronically, provide such data in Excel spreadsheet with all underlying data un-redacted and all underlying formulas and algorithms intact.

5. 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. The Commission will return any infected media for**

replacement, which may affect the timing of the Company's compliance with this SDT.

6. All documents responsive to this SDT, 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 Company 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 the Company 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 Commission 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 Commission representative will provide a sample index upon request.

X. If any documents are withheld from production based on a claim of privilege, provide a statement of the claim of privilege and all facts relied upon in support thereof, in the form of a log (hereinafter "Complete Log") that includes each document's authors, addressees, date, a description of each document, and all recipients of the original and any copies. Attachments to a document should be identified as such and entered separately on the log. For each author, addressee, and recipient, state the person's full name, title, and employer or firm, and denote all attorneys with an asterisk. The description of the subject matter shall describe the nature of each document in a manner that, though not revealing information itself privileged, provides sufficiently detailed information to enable Commission staff, the Commission, or a court to assess the applicability of the privilege claimed. For each document withheld under a claim that it constitutes or contains attorney work product, also state whether the Company asserts that the document was prepared in anticipation of litigation or for trial and, if so, identify the anticipated litigation or trial upon which the assertion is based. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has already been produced in response to this instruction), noting where redactions in the document have been made. Documents authored by outside lawyers representing the Company that were not directly or indirectly furnished to the Company or any third-party, such as internal law firm memoranda, may be omitted from the log.

In place of a Complete Log of all documents withheld from production based on a claim of privilege, the Company may elect to submit a Partial Privilege Log ("Partial Log") for each person searched by the Company whose documents are withheld based on such claim and a Complete Log for a subset of those persons, as specified below:

1. The Partial Log will contain the following information: (a) the name of each person from whom responsive documents are withheld on the basis of a claim of privilege; and (b) the total number of documents that are withheld under a claim of privilege (stating the number of attachments separately) contained in each such person's files. Submit all non-privileged portions of any responsive document (including non-privileged or redactable attachments) for which a claim of privilege is asserted (except where the only non-privileged information has

already been produced in response to this instruction), noting where redactions in the document have been made.

2. Within five (5) business days after receipt of the Partial Log, Commission staff may identify in writing five individuals or ten percent of the total number of persons searched, whichever is greater, for which the Company will be required to produce a Complete Log in order to certify compliance with this SDT.

3. For the Company to exercise the option to produce a Partial Log, the Company must provide a signed statement in which the Company acknowledges and agrees that, in consideration for being permitted to submit a Partial Log:

   (a) The Commission retains the right to serve a discovery request or requests regarding documents withheld on grounds of privilege in the event the Commission seeks relief through judicial or administrative proceedings;

   (b) The Company will produce a Complete Log of all documents withheld from production based on a claim of privilege no later than fifteen (15) calendar days after such a discovery request is served, which will occur promptly after the filing of the Commission's complaint; and

   (c) The Company waives all objections to such discovery, including the production of a Complete Log of all documents withheld from production based on a claim of privilege, except for any objections based strictly on privilege.

4. The Company retains all privileged documents that are responsive to SDT until the completion of any investigation of the relevant transaction.

5. The Commission will retain the right to require the Company to produce a Complete Log for all persons searched in appropriate circumstances.

Y. If the Company is unable to answer any question fully, supply such information as is available. Explain why such answer is incomplete, the efforts made by the Company to obtain the information, and the source from which the complete answer may be obtained. If books and records that provide accurate answers are not available, enter best estimates and describe how the estimates were derived, including the sources or bases of such estimates. Estimated data should be followed by the notation "est." If there is no reasonable way for the Company to make an estimate, provide an explanation.

Z. 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 as disclosed or described in response to Specification 18 of this SDT, but

the Company has 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.

AA. In order for the Company's response to this SDT to be complete, the attached certification form must be executed by the official supervising compliance with this SDT, notarized, and submitted along with the responsive materials.

Any questions you have relating to the scope or meaning of anything in this SDT or suggestions for possible modifications thereto should be directed to Jeanne Liu at 202-326-3572. The response to the SDT shall be addressed to the attention of Jeanne Liu, Federal Trade Commission, 601 New Jersey Avenue, NW, Washington, DC 20580, and delivered between 8:30 a.m. and 5:00 p.m. on any business day to the Federal Trade Commission. If you wish to submit your response by United States mail, please call one of the staff listed above for mailing instructions.

CERTIFICATION

This response to the Subpoena *Duces Tecum* issued by the Federal Trade Commission was prepared under my supervision in accordance with its Definitions and Instructions. Subject to the recognition that, where so indicated, reasonable estimates have been made because books and records do not provide the required information, the information is, to the best of my knowledge, true, correct, and complete.

_____
(Signature)

_____
(Type or print name and title)

_____
(Company name)

Subscribed and sworn to before me at the City of _____,

State of _____, this _____day of _____, 2010

_____
(Notary public)

_____
(Date commission expires)

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: **Jon Leibowitz, Chairman**
William E. Kovacic
J. Thomas Rosch
Edith Ramirez
Julie Brill

RESOLUTION AUTHORIZING USE OF COMPULSORY PROCESS IN NONPUBLIC INVESTIGATION

File No. 101-0167

Nature and Scope of Investigation:

To determine whether the proposed acquisition of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC; and all related entities by ProMedica Health System, Inc., violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid transaction, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Federal Trade Commission hereby resolves and directs that any and all compulsory processes available to it be used in connection with this investigation.

Authority to Conduct Investigation:

Sections 6, 9, 10, and 20 of the Federal Trade Commission Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; FTC Procedures and Rules of Practice, 16 C.F.R. § 1.1, et seq. and supplements thereto.

By direction of the Commission.

Donald S. Clark
Secretary

Dated: August 9, 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, 600 Pennsylvania Avenue, NW Washington, DC 20580 *Petitioner*, v. **PROMEDICA HEALTH SYSTEM, INC**. 1801 Richards Road Toledo, Ohio 43607, **PARAMOUNT HEALTH CARE**, 1901 Indian Wood Circle Maumee, Ohio 43537, **ST. LUKE'S HOSPITAL** 5901 Monclova Road Maumee, Ohio 43537, *Respondents*.	Misc. No.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EMERGENCY PETITION OF THE FEDERAL TRADE COMMISSION FOR AN ORDER ENFORCING SUBPOENAS DUCES TECUM AND CIVIL INVESTIGATIVE DEMANDS ISSUED IN A MERGER INVESTIGATION

The Federal Trade Commission ("FTC" or "Commission") respectfully urges the Court to treat this summary enforcement matter as an emergency. This matter involves an FTC investigation of a consummated merger. Although the parties have signed a limited "hold-separate" agreement, the companies will be free to integrate and consolidate operations, including eliminating certain hospital services, starting at midnight on October 30, 2010 (a Saturday). Once that consolidation has occurred, the Commission's ability to obtain effective relief in this matter, if the transaction is later held unlawful, is much more difficult. (Pet. Exh. 1, Liu Dec. ¶ 14.) In order to allow FTC staff sufficient time to review the sought-after materials

and take them into account in a recommendation prior to expiration of the hold-separate agreement, the Commission will need the required materials by October 21. The Commission then will consider, *inter alia*, whether, pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b), it will seek temporary or preliminary relief from a United States district court before the hold-separate agreement expires.

Preliminary Statement

This case involves the consolidation of two general acute-care hospital systems in the Toledo area. Specifically, pursuant to a Joinder Agreement, ProMedica Health System, Inc. ("ProMedica") acquired St. Luke's Hospital ("St. Luke's"). The transaction may substantially lessen competition in the market for general acute-care inpatient hospital services and other medical services, such as obstetrics. The Federal Trade Commission is conducting an investigation to determine whether the transaction violates the antitrust laws and would result in higher rates for health plans, as well as increased insurance premiums and greater out-of-pocket expenses for consumers in the Toledo area. The FTC has issued subpoenas and civil investigative demands ("CIDs") to ProMedica, Paramount Health Care ("Paramount") (a subsidiary of ProMedica), and St. Luke's, in order to obtain documents, data, and interrogatory responses that are relevant to the Commission's economic and legal analysis of the transaction. The FTC has attempted, without success, to obtain the necessary materials without seeking a court order. However, the parties have only provided a small portion of the materials required to be produced by the subpoenas and the CIDs by the return date of September 24. Specifically, ProMedica has produced only its organizational charts; St. Luke's has produced some documents, but not anything even arguably approaching full compliance with its subpoena or

CID; and Paramount has produced nothing at all. Indeed, ProMedica's counsel admitted to Commission staff on September 19, 2010 – less than one week before the return date – that counsel had not yet even visited the client's offices to begin document and data retrieval. Accordingly, the Commission petitions this Court, pursuant to Sections 9 and 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 49 and 57b-1, and 28 U.S.C. § 1367(a), for an order requiring Respondents ProMedica, Paramount, and St. Luke's to produce the documents and other materials sought by the Commission's subpoenas and CIDs.

JURISDICTION AND VENUE

The FTC Act empowers the Commission to issue subpoenas and CIDs in aid of the Commission's authority.[1] If a subpoena recipient fails to comply, the Commission may petition the district court "within the jurisdiction of which such inquiry is carried on" for an order requiring compliance. *See* 15 U.S.C. § 49. The current investigation, including review of the transaction by the Commission's economists and lawyers, is being carried on within this judicial district at the FTC's headquarters. (Pet. Exh. 1, Liu Dec. ¶ 6.) Because this proceeding seeks to enforce both subpoenas and CIDs, this Court has supplemental jurisdiction, under 28 U.S.C. § 1367(a), to enforce the CIDs issued to those parties because the Court has original jurisdiction over a subpoena enforcement action, and enforcement of the CIDs is "so related" to that claim "that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a); *see also* 28 U.S.C. § 1331 (jurisdiction over federal

[1] Section 9 of the FTC Act, 15 U.S.C. § 49, gives the Commission authority to issue subpoenas in order to obtain the testimony of a witness or the production of documents. When the Commission seeks responses to interrogatories in an antitrust investigation, it invokes its authority to issue CIDs pursuant to Section 20 of the FTC Act, 15 U.S.C. § 57b-1.

questions and actions brought by agencies to enforce federal law).[2] Accordingly, this Court should issue a show cause order requiring ProMedica, Paramount, and St. Luke's to comply with the Commission's process.

STATEMENT

ProMedica, Paramount, and St. Luke's are private companies with their principal places of business in the Toledo area. On May 25, 2010, ProMedica executed a Joinder Agreement with St. Luke's. The Agreement did not trigger the premerger reporting requirements of the Hart-Scott-Rodino Act.[3] (Pet. Exh. 1, Liu Dec. ¶ 9.) Nonetheless, the Agreement is tantamount to an acquisition for purposes of Section 7 of the Clayton Act, 15 U.S.C. § 18, given the economic or decision-making control that ProMedica will exercise over St. Luke's. Additionally, the ProMedica-St. Luke's Joinder Agreement is a "contract" under Sherman Act § 1, 15 U.S.C. § 1, the provisions of which the Commission can enforce under Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), if the acquisition is an "unfair method of competition."

In July 2010, the Commission opened a preliminary investigation of the transaction to determine whether it violates the antitrust laws. (Pet. Exh. 1, Liu Dec. ¶ 9.) On July 16, Commission staff sent the parties letters seeking voluntary access to documents, in order to aid its investigation. (Pet. Exh. 1, Liu Dec. ¶ 10.) On August 6, FTC staff notified ProMedica that its preliminary investigation was moving into a full-phase investigation. (Pet. Exh. 1, Liu Dec.

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[2] Where a CID is the only investigative process at issue, the Commission, pursuant to Section 20(e) of the FTC Act, 15 U.S.C.§ 57b-1(e), seeks enforcement in the judicial district where the CID recipient "resides, is found, or transacts business."

[3] The Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a.

¶ 12.) On August 9, the Commission issued an order authorizing staff to issue compulsory process, such as CIDs and subpoenas, in order to obtain relevant materials. (Pet. Exh. 1, Liu Dec. ¶ 13; Pet. Exh. 2 ("Resolution Authorizing Use of Compulsory Process in Nonpublic Investigations," FTC File No.101-0167).) On August 25, the FTC issued subpoenas and CIDs to ProMedica, Paramount, and St. Luke's with a return date of September 24, 2010.[4] Since the day that FTC staff first contacted Respondents' counsel about the CIDs and subpoenas, FTC staff has repeatedly requested a rolling production of certain priority materials. FTC staff and the parties' counsel also have been engaged in discussions regarding potential modifications of the CIDs and subpoenas in order to reduce any burden on Respondents, while meeting the Commission's need for information to analyze the transaction and protect consumers. Notably, such discussions do not extend the return dates for the subpoenas and CIDs, nor do they provide a legitimate basis for Respondents to delay production of responsive documents and information. The details of these negotiations are described in the accompanying declaration of the Commission's lead attorney. (Pet. Exh. 1, Liu Dec. ¶¶ 8-35.) To date, however, none of the parties has come even close to substantial compliance with the outstanding CIDs and subpoenas. (Pet. Exh. 1, Liu Dec. ¶¶ 7, 36.)

ProMedica and St. Luke's initially intended to consummate the transaction on July 30, 2010. After initially agreeing to provide the FTC with only two additional weeks to conduct its investigation, ProMedica ultimately agreed to a limited "hold-separate" arrangement. That arrangement allowed the parties to close the transaction, but required them to delay (among other things) integration or consolidation of the hospitals' services and staff for 60 days after closing.

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[4] The subpoenas and CIDs are Pet. Exhs. 3-8.

The parties closed the transaction on August 31. Thus, the hold-separate agreement expires on October 30, 2010. (Pet. Exh. 1, Liu Dec. ¶ 14.) Once the hold-separate agreement expires, the parties can eliminate service offerings at St. Luke's, terminate health plan contracts, and take additional steps to consolidate services and operations. Consequently, it is important that the parties produce the outstanding material in sufficient time for FTC staff to take them into account in a recommendation for the Commission to consider them prior to expiration of the hold-separate agreement.

ARGUMENT

ProMedica, Paramount, and St. Luke's have not satisfied their obligations under the CIDs and subpoenas. ProMedica has produced only its organization charts; St. Luke's has produced some documents and data, but not anything even arguably approaching full compliance with its subpoena or CID; and Paramount has produced nothing at all. Accordingly, the question before the Court is quite simple: should Respondents be ordered to comply? For the reasons explained below, they should. This Court also should address the matter promptly because, without swift judicial action, the FTC may be hampered in its ability to obtain effective relief if it decides, after reviewing all relevant materials, to challenge the ProMedica-St. Luke's transaction and to seek temporary and preliminary relief in advance of the October 30, 2010, expiration date of the hold-separate agreement.

I. Standards for Enforcement of Agency Process

The standards for the judicial enforcement of administrative compulsory process have long been settled in this Circuit: "[T]he court's role in a proceeding to enforce an administrative subpoena is a strictly limited one." *FTC v. Texaco, Inc.*, 555 F.2d 862, 871-72 (D.C. Cir. 1977)

(*en banc*) (citing *Endicott Johnson v. Perkins*, 317 U.S. 501, 509 (1943)); *see also Oklahoma Press Publ'g Co. v. Walling*, 327 U.S. 186, 209 (1946); *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950). And "while the court's function is 'neither minor nor ministerial,' the scope of issues which may be litigated in an enforcement proceeding must be narrow, because of the important governmental interest in the expeditious investigation of possible unlawful activity." *Id.* at 872 (quoting *Oklahoma Press Publ'g*, 327 U.S. at 217 n.57); *accord, FTC v. Anderson*, 631 F.2d 741, 744-45 (D.C. Cir. 1979).

Thus, a district court must enforce agency investigative process so long as "the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant. *See Texaco*, 555 F.2d at 872 (quoting *Morton Salt*, 338 U.S. at 652). In making this determination, the agency's own appraisal of relevancy must be accepted so long as it is not "obviously wrong." *FTC v. Invention Submission* Corp., 965 F.2d 1086, 1089 (D.C. Cir. 1992) (citing *FTC v. Carter*, 636 F.2d 781, 787-88 (D.C. Cir. 1980)). Furthermore, proceedings to enforce administrative investigative subpoenas and CIDs are entitled to summary disposition. They are special statutory matters cognizable under Fed. R. Civ. P. 81(a)(5), and are properly instituted by a petition and order to show cause (rather than by complaint and summons). *See, e.g., FTC v. MacArthur*, 532 F.2d 1135, 1141-42 (D.C. Cir. 1976). And they are summary in nature: discovery or evidentiary hearings may be granted only upon a showing of "extraordinary circumstances," which are not present here; otherwise, "'discovery is improper in a summary subpoena enforcement proceeding.'" *Carter*, 636 F.2d at 789 (quoting *United States v. Exxon Corp.*, 628 F.2d 70, 77 n.7 (D.C. Cir. 1980)); *accord, Invention Submission*, 965 F.2d at 1091.

II. The CIDs and Subpoenas Are Lawful, Seek Relevant Documents, and Are Not Unduly Burdensome

As shown below, all the standards governing enforcement of FTC compulsory process have been satisfied. The Commission lawfully issued the subpoenas and CIDs to Respondents ProMedica, Paramount, and St. Luke's; the information and documents being sought plainly are relevant to the Commission's investigation; and compliance with the subpoenas and CIDs does not impose an undue burden.

A. The CIDs and Subpoenas Are Lawful

The Commission properly issued the subpoenas and CIDs as part of an investigation concerning possible violations of Section 5 of the FTC Act, 15 U.S.C. § 45,[5] and Section 7 of the Clayton Act, 15 U.S.C. § 18.[6] The Commission initiated the investigation formally by issuing its investigational Resolution in August 2010. According to the Resolution (Pet. Exh. 2), the Commission seeks

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[5] Section 5 provides in relevant part:

> (a)(1) Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.
>
> (2) The Commission is hereby empowered and directed to prevent persons, partnerships, or corporations * * * from using unfair methods of competition in or affecting commerce * * *.

[6] Section 7 provides in relevant part:

> No person engaged in commerce or in any activity affecting commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital and no person subject to the jurisdiction of the Federal Trade Commission shall acquire the whole or part of the assets of another person * * * where in any line of commerce * * * the effect of such acquisition may be substantially to lessen competition * * *.

> To determine whether the proposed acquisition of St. Luke's Hospital; St. Luke's Hospital Foundation, Inc.; WellCare Physicians Group, LLC; and all related entities by ProMedica Health System, Inc., violates Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; to determine whether the aforesaid transaction, if consummated, would be in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, as amended, or Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, as amended; and to determine whether the requirements of Section 7A of the Clayton Act, 15 U.S.C. § 18a, have been or will be fulfilled with respect to said transaction.

The Commission also resolved that "any and all compulsory process available to it be used in connection with this investigation."[7] As discussed above, Sections 6, 9, and 20 of the FTC Act indisputably grant the Commission the authority to investigate the transaction and to issue subpoenas and CIDs in aid of the Commission's inquiry. Thus, there is no question that the subpoenas were properly authorized and duly issued. *See* 15 U.S.C. § 49; *see also* 16 C.F.R. § 2.7(a).[8] The subpoenas seek documents (described in detailed specifications) that are indisputably "relating to" the subject matter of the investigation, and, as required by 15 U.S.C. § 49, they were duly signed by a member of the Commission. (Pet. Exhs. 4, 6, 8.) Similarly, the CIDs were properly authorized and duly issued. *See* 15 U.S.C. § 57b-1(c)(1). As required by Section 20(i), 15 U.S.C. § 57b-1(i), the CIDs were signed by a member of the Commission

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[7] The Resolution cited "Sections 6, 9, 10, and 20 of the FTC Act, 15 U.S.C. §§ 46, 49, 50, and 57b-1, as amended; and FTC Procedures and Rules of Practice, 16 C.F.R. §§ 1.1 *et seq.*, and supplements thereto." (Pet. Exh. 2.)

[8] Section 2.7(a) of the Commission's Rules of Practice provides, in relevant part: "The Commission or any member thereof may, pursuant to a Commission resolution, issue a subpoena or a civil investigative demand directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence, or both, or, in the case of a civil investigative demand, to provide a written report or answers to questions relating to any matter under investigation by the Commission."

and were authorized by an investigational resolution issued by the Commission. (Pet. Exhs. 3, 5, 7.) Notably, ProMedica and St. Luke's have made company witnesses available for investigational hearings pursuant to subpoenas *ad testificandum* without raising any objections. (Pet. Exh. 1, Liu Dec. ¶ 36.)

B. The Responsive Documents and Information Are Reasonably Relevant to the Commission's Investigation

The standard for judging relevancy in an investigatory proceeding is more relaxed than in an adjudication. In an investigatory proceeding the Commission merely seeks to learn whether there is reason to believe that the law is being violated and, if so, whether issuance of a complaint would be in the public interest. *See Texaco*, 555 F.2d at 872. The requested materials, therefore, need only be relevant to the investigation – the boundary of which may be defined by the agency quite generally. *See Carter*, 636 F.2d at 787-88; *Texaco*, 555 F.2d at 874 & n.26. Indeed, "a court must respect the agency's 'power of inquisition' and interpret relevance broadly." *FTC v. Invention Submission Corp.*, 1991 U.S. Dist. LEXIS 5523 at *5 (D.D.C. Feb. 14, 1991) (quoting *Morton Salt*, 338 U.S. at 642), *aff'd*, 965 F.2d 1086. As the D.C. Circuit has explained, "in the pre-complaint stage, an investigating agency is under no obligation to propound a narrowly focused theory of a possible future case." *Texaco*, 555 F.2d at 874.

In the present investigation, the Commission seeks to determine whether ProMedica's acquisition of St. Luke's may harm competition for general acute-care hospital services, and other specific services, in the Toledo area. (Pet. Exh. 1, Liu Dec. ¶ 6.) The documents, data, and interrogatory responses requested by the outstanding subpoenas and CIDs are plainly relevant to that inquiry. The material in question includes, most notably, the following:

a. Documents relating to St. Luke's current and projected financial outlook and strategies contemplated by St. Luke's to maintain or improve its financial outlook;

b. Individual-level hospital claims data for inpatient services;

c. Internal company financials (including budgets, profit-and-loss statements, and documents regarding contribution margins, fixed and variable costs, and forward-looking financial projections);

d. Documents regarding local competition in hospital services;

e. Contracts with health plans and associated contract-negotiation documents;

f. Documents regarding the ProMedica-St. Luke's transaction and its potential effects on competition; and

g. Documents and data supporting the parties' claimed efficiencies.

All the documents and data requested by the Commission in the current investigation, including specifically those listed above, are highly relevant to the Commission's analysis of the impact of the transaction on competition. (Pet. Exh. 1, Liu Dec. ¶ 37.) Indeed, Respondents have not argued to the contrary. Instead, they have simply impeded the inquiry by either failing entirely to produce the requested information and documents, or by producing a small number of documents of their own choosing at such a slow pace that FTC staff may be left unable to consider them in a timely manner. Specifically, the Commission must evaluate staff's recommendation and make a determination whether it has "reason to believe" there is a violation with enough time remaining before expiration of the hold-separate agreement to seek temporary or preliminary injunctive relief from a United States district court. *See* 15 U.S.C. § 53(b).

C. Compliance With the CIDs and Subpoenas Is Not Unduly Burdensome

The subpoenas and CIDs issued to the parties are typical of those routinely issued in FTC merger investigations. Indeed, Respondents have not filed an administrative petition to quash or limit the CIDs or subpoenas, as provided in the FTC's Rules of Practice and Procedure, *see* 16 C.F.C. § 2.7(d), and therefore are foreclosed from pursuing such a claim before this Court in the first instance. *See, e.g., FTC v. O'Connell*, 828 F. Supp. 165, 168 (E.D.N.Y. 1993); *EEOC v. City of Milwaukee*, 919 F. Supp. 1247 (E.D.Wis. 1996); *Invention Submission Corp*., 1991 U.S. Dist. LEXIS 5523 at *5 (D.D.C. Feb. 14, 1991), *aff'd*, 965 F.2d 1086 (D.C. Cir. 1992).

When a party has any legal or factual objections to compulsory process issued by the Commission, a longstanding Commission Rule requires that all such objections initially be raised with the Commission through a petition to limit or quash the process. *See* 16 C.F.R. § 2.7(d). Such a petition must be filed with the Commission's Secretary within the earlier of 20 days of service of process or the return date. *Id*. ProMedica, Paramount, and St. Luke's have not filed such a petition, timely or otherwise. (Pet. Exh. 1, Liu Dec. ¶ 36.)

In any event, even if the Court were inclined to consider such a claim, it is meritless. In order to prove that compliance with the CIDs and subpoenas would be unduly burdensome, ProMedica, Paramount, and St. Luke's each must show that compliance would threaten to disrupt their business unduly, or otherwise seriously hinder their operations. *See, e.g., Texaco*, 555 F.2d at 882; *Invention Submission Corp.*, 965 F.2d at 1090; *FTC v. Rockefeller*, 591 F.2d 182, 190 (2d. Cir. 1979). They cannot make such a showing here. The CIDs and subpoenas issued to the parties are typical of the compulsory process involved in merger investigations.

Further, as described in the accompanying declaration of the FTC's lead attorney, FTC staff has been willing to modify the CIDs and subpoenas from the outset; FTC staff has had frequent discussions with the parties about modifications; and FTC staff has granted modifications of the CIDs and subpoenas in an attempt to ease any burden while ensuring that the Commission has comprehensive information to analyze the transaction. Still, despite staff's request for a rolling production, the parties have produced very few documents and data, and have failed even to provide a schedule pursuant to which such material will be produced. The apparent intent of the parties' foot-dragging is to "run out the clock" until October 30. In short, the parties have treated the Commission's duly-issued subpoenas and CIDs as voluntary requests to be complied with at the parties' leisure, if ever. (Pet. Exh. 1, Liu Dec. ¶¶ 17-35.)

III. Because Respondents Have Closed the Transaction, They Should Be Ordered to Comply Immediately to Protect the Commission's Ability to Obtain Effective Relief Were It to Challenge the Transaction

The Commission asks the Court to treat this matter as an emergency. ProMedica and St. Luke's closed the transaction on August 31, subject to a limited "hold-separate" arrangement. That arrangement allowed the parties to close the transaction, but required them to delay (among other things) integration or consolidation of hospitals' services and staff for 60 days after closing. The purpose of the hold-separate agreement was to delay consolidation of the parties' operations for a brief period so that the Commission could review the transaction and determine if it would harm competition and, ultimately, consumers. That agreement expires on October 30, 2010. (Pet. Exh. 1, Liu Dec. ¶ 14.) After that date, the parties can, subject to certain contractual limitations, eliminate service offerings at St. Luke's, terminate health plan contracts, and take additional steps to consolidate.

The short period of time remaining before October 30 requires the Commission to ask this Court to expedite its decision. The Commission must be prepared to determine whether the transaction is anticompetitive and, if necessary, initiate an action to challenge the acquisition on a very abbreviated schedule. As a result, time is of the essence in the Court's resolution of this petition. The Commission staff sought to require ProMedica, Paramount, and St. Luke's to produce documents promptly, particularly certain key types of documents and data, so that staff could analyze them and complete the investigation expeditiously. Commission staff will need at least seven days (a significantly compressed amount of time given the nature of the material requested) to review the sought-after materials once they are produced in order to incorporate them into a recommendation to the Commission. As a result, the Commission staff will need the documents, data, and interrogatory answers by October 21. Thereafter, the Commission must evaluate the competitive effects of the proposed transaction in light of the results of the staff investigation and must decide whether to initiate a challenge to the acquisition.

Any delay in the resolution of the petition may limit the Commission's ability to comprehensively evaluate this transaction and take action, if necessary, to protect consumers. Furthermore, if the Commission were forced to defer full evaluation of the proposed transaction until *after* the hospitals have been consolidated, further harm may result, because it usually is far more difficult to obtain effective relief after a merger has closed and the parties have started integrating operations. Respondents' unjustified and unexplained refusal to comply with the Commission's subpoenas and CIDs could effectively prevent the Commission from obtaining the relief that it deems necessary in the public interest.

Conclusion

The Commission's petition to enforce the subpoenas and CIDs should be granted, and the Court should enter its own order requiring Respondents to provide the requested documents, data, and interrogatory responses no later than October 21, 2010.

Respectfully submitted.

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, Petitioner, v. PROMEDICA HEALTH SYSTEM, INC., PARAMOUNT HEALTH CARE, & ST. LUKE'S HOSPITAL, Respondents.	)	Misc. No.

[PROPOSED] ORDER TO SHOW CAUSE

Pursuant to the authority conferred by Sections 9, 16, and 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 49, 56, 57b-1, and 28 U.S.C. § 1367(a), Petitioner, the Federal Trade Commission ("FTC" or "Commission"), has invoked the aid of this Court, pursuant to Fed. R. Civ. P. 81(a)(5), for an order requiring Respondents ProMedica Health System, Inc., Paramount Health Care, and St. Luke's Hospital to comply in full with the August 25, 2010, subpoenas *duces tecum* and civil investigative demands ("CIDs") issued to them in a merger investigation being conducted by the Commission (FTC File No. 101-0167).

The Court has considered the Emergency Petition of the Federal Trade Commission for an Order Enforcing Subpoenas *Duces Tecum* and Civil Investigative Demands Issued in a Merger Investigation and the papers filed in support thereof; and it appears to the Court that Petitioner has shown good cause for the entry of this Order. It is by this Court hereby

ORDERED that Respondents ProMedica Health System, Inc., Paramount Health Care, and St. Luke's Hospital appear at _____ on the ___ day of October, 2010, in Courtroom No. _____ of the United States Courthouse in Washington, D.C., and show cause, if any there be, why this Court should not grant said Petition and enter an Order enforcing the subpoenas and CIDs issued to Respondents and directing them to produce, no later than October 21, 2010, all responsive materials. Unless the Court determines otherwise, notwithstanding the filing or pendency of any procedural or other motions, all issues raised by the Petition and supporting papers, and any opposition to the Petition, will be considered at the hearing on the Petition, and the allegations of said Petition shall be deemed admitted unless controverted by a specific factual showing.

IT IS FURTHER ORDERED that, if Respondents believe it necessary for the Court to hear live testimony, they must file an affidavit reflecting such testimony (or, if a proposed witness is not available to provide such an affidavit, a specific description of the witness's proposed testimony) and explain why Respondents believe live testimony is required.

IT IS FURTHER ORDERED that, if Respondents intend to file pleadings, affidavits, exhibits, motions, or other papers in opposition to said Petition or to the entry of the Order requested therein, such papers must be filed with the Clerk, and served by hand or by email on Petitioner's counsel, no later than 9:30 a.m. on October 12, 2010. Any reply by Petitioner shall be filed with the Court, and served by email or by hand on Respondents' counsel, two (2) days after Respondents file their oppositions.

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 81(a)(5), that this is a summary proceeding and that no party shall be entitled to discovery without further order of the Court upon a specific showing of need; and that the dates for a hearing and the filing of papers established by

this Order shall not be altered without prior order of the Court upon good cause shown; and

IT IS FURTHER ORDERED, pursuant to Fed. R. Civ. P. 81(a)(5), that a certified copy of this Order and copies of said Petition and memorandum in support thereof filed herein, be served forthwith by Petitioner upon Respondents or their counsel by personal service, or by overnight express delivery service.

SO ORDERED:

_____
United States District Judge

Dated: _____, Washington, D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION, Petitioner, v. PROMEDICA HEALTH SYSTEM, INC., PARAMOUNT HEALTH CARE, and ST. LUKE'S HOSPITAL Respondents.	)	Misc. No.

[Proposed] ORDER

Petitioner, the Federal Trade Commission, has invoked the aid of this Court, pursuant to Sections 9, 16, and 20 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 49, 56, 57b-1, and 28 U.S.C. § 1367(a), to require Respondents ProMedica Health System, Inc., Paramount Health Care, and St. Luke's Hospital to comply in full with the Commission's subpoenas *duces tecum* and civil investigative demands ("CIDs") issued to them on August 25, 2010 in an FTC investigation, FTC File No. 101-0167. The subpoenas and CIDs were issued by the Commission in aid of an investigation of possible violations of Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a). After considering the papers of record and the arguments of the parties, the Court has determined that the inquiry is within the authority of the agency, that the information sought is reasonably relevant to the inquiry, and that the inquiry is not unduly burdensome. Because the Court is of the opinion that the relief sought by the Commission should be granted, it is hereby ORDERED that no later than October 21, 2010, or at such later date as may be agreed upon by the parties, Respondents shall produce all documents, data, and interrogatory responses in their custody, possession or control

that are responsive to the outstanding subpoenas and CIDs, to the extent that these materials have not been produced previously to the Commission.

SO ORDERED:

_____
United States District Judge

Dated: October __, 2010, Washington, DC