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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

HACKENSACK MERIDIAN HEALTH,
INC. and ENGLEWOOD HEALTHCARE
FOUNDATION,

Defendants.

Honorable John Michael Vazquez, U.S.D.J.

Civil Action No. 2:20-cv-18140-JMV-JBC

**DEFENDANT ENGLEWOOD
HEALTHCARE FOUNDATION'S
ANSWER AND DEFENSES**

Defendant Englewood Healthcare Foundation (“Englewood”), by and through its undersigned counsel, responds below to the Federal Trade Commission’s (“Commission” or “the FTC”) Complaint for a Temporary Restraining Order and Preliminary Injunction (“Complaint”) dated December 3, 2020. To the extent not specifically admitted in the following paragraphs, the allegations in the Complaint are denied.

GENERAL RESPONSE TO THE COMMISSION’S ALLEGATIONS

To the extent a response is required, Englewood denies the allegations and legal conclusions contained in the FTC’s unnumbered introductory paragraphs in the Complaint except that Englewood admits that (a) Hackensack Meridian *Health*, Inc. (“HMH”) and Englewood entered into an affiliation agreement dated September 23, 2019, whereby HMH will become the sole member and the ultimate parent entity of Englewood (the “Transaction”), and (b) the FTC filed an administrative complaint on December 3, 2020 and an administrative hearing is currently scheduled to begin on June 15, 2021.

Contrary to the allegations of the Complaint, the proposed merger between Englewood and HMH is procompetitive and will not cause a substantial lessening of competition in any relevant market. The FTC’s Complaint is premised on a contrived and artificial geographic market delineated not by real-world industry dynamics, but by arbitrary county lines dating back to the pre-Revolutionary War colonies. The FTC’s manufactured market does not account for how patients seek care or how payors operate in a metropolitan area today, where competition does not stop at any single county’s line. Englewood and HMH face robust and increasing competition, both within New Jersey and from the strong and expanding set of competitors in the urban New York metropolitan area. The proposed merger would result in substantial procompetitive benefits, including, but not limited to, merger-specific pricing efficiencies, cost synergies, quality improvements, increased access to tertiary and quaternary services, and other procompetitive effects, all of which will directly benefit insurers, employers, patients, and payors in and around the New Jersey/New York Metropolitan area.

I.

NATURE OF THE CASE¹

1. Englewood denies the allegations contained in Paragraph 1 of the Complaint, except to admit that (a) Englewood has entered into a proposed transaction with HMH; and (b) Englewood is an independent hospital and health system operating in Bergen County, New Jersey, among other geographies.

2. Englewood denies the allegations contained in Paragraph 2 of the Complaint and specifically denies that “[t]he Proposed Transaction would enhance HMH’s dominant position in Bergen County,” that HMH and Englewood “compete[] head-to-head,” and that the “Proposed Transaction would eliminate this competition,” except to admit that Englewood is a provider of inpatient general acute care (“GAC”) services. Englewood further states that Paragraph 2 of the Complaint contains legal conclusions to which no response is required.

3. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 3 of the Complaint, and therefore denies the same.

4. Paragraph 4 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 4 of the Complaint, and specifically denies that “[t]he Proposed Transaction will substantially lessen competition in the market for inpatient GAC hospital services sold and provided to commercial insurers and their enrollees” and that “[t]he relevant geographic market for evaluating the Proposed Transaction is no broader than Bergen County.”

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

¹ For ease of reference, Englewood’s Answer uses the section numbering and headings in the Complaint. In so doing, Englewood does not admit or concede the factual bases or legal conclusions included in the Complaint’s headings.

6. Paragraph 6 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 6 of the Complaint.

7. Englewood denies the allegations contained in Paragraph 7 of the Complaint and specifically denies that “[q]uantitative analysis . . . confirms that HMH and Englewood are close competitors,” except to admit that Englewood provides inpatient GAC and other services to patients in Bergen County, as well as other areas. Englewood lacks the knowledge or information sufficient to respond to the remaining allegations contained in Paragraph 7 of the Complaint as they pertain to HMH, and therefore denies the same.

8. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 8 of the Complaint, and therefore denies the same.

9. Englewood denies the allegations contained in Paragraph 9 of the Complaint, and specifically denies that Englewood offers “very similar services” as HMH’s Hackensack University Medical Center (“HUMC”) facility and that “insurers would have very few alternatives for inpatient GAC hospital services in Bergen County” as a result of the Proposed Transaction.

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

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

12. Englewood denies the allegations contained in Paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 13 of the Complaint, and therefore

denies the same, except to admit that Englewood and HMH can proceed with the Proposed Transaction absent Court intervention.

14. Englewood denies the allegations contained in Paragraph 14 of the Complaint, except to admit that the Parties have stipulated to the entry of the temporary restraining order as set forth in this Court's Order on December 4, 2020 (Dkt. No. 4). Englewood further states that Paragraph 14 of the Complaint contains legal conclusions to which no response is required.

II.

BACKGROUND

A.

Jurisdiction and Venue

15. Paragraph 15 of the Complaint contains legal conclusions to which no response is required.

16. Englewood admits that Englewood transacts business in the District of New Jersey. The remainder of Paragraph 16 of the Complaint contains legal conclusions to which no response is required.

17. Paragraph 17 of the Complaint contains legal conclusions to which no response is required.

18. Paragraph 18 of the Complaint contains legal conclusions to which no response is required.

B.

The Parties

19. Paragraph 19 of the Complaint contains legal conclusions to which no response is required.

20. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 20 of the Complaint, and therefore denies the same.

21. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 21 of the Complaint, and therefore denies the same.

22. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 22 of the Complaint, and therefore denies the same.

23. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 23 of the Complaint, and therefore denies the same.

24. Englewood denies the allegations contained in Paragraph 24 of the Complaint, except to admit that (a) Englewood is a New Jersey non-profit corporation; (b) Englewood is headquartered in Englewood, New Jersey; (c) Englewood's subsidiaries and affiliates include Englewood Hospital and Medical Center, the Englewood Physician Network, and the Englewood Healthcare Foundation; and (d) Englewood's 2019 consolidated financial statements reflect \$768.895 million in total operating revenue.

25. Englewood denies the allegations contained in Paragraph 25 of the Complaint, except to admit that (a) Englewood operates an inpatient hospital in Bergen County; (b) Englewood's services include cardiac surgery and care, cancer care, orthopedic surgery, spine surgery, vascular surgery, women's health, and bloodless medicine and surgery, and; (c) Englewood Hospital and Medical Center is licensed for 531 beds.

26. Admitted.

C.

The Proposed Transaction and the Commission's Response

27. Admitted.

28. Admitted.

29. Admitted.

30. Englewood admits that the Commission filed an administrative complaint on December 3, 2020 and an administrative hearing is currently scheduled to begin on June 15, 2021. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in the first sentence of Paragraph 30 of the Complaint, and therefore denies the same. Englewood further states that Paragraph 30 of the Complaint contains legal conclusions as to which no response is required.

31. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 31 of the Complaint, and therefore denies the same.

III.

PURPORTED RELEVANT SERVICE MARKET

32. Paragraph 32 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 32 of the Complaint.

33. Paragraph 33 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 33 of the Complaint.

34. Paragraph 34 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 34 of the Complaint.

35. Paragraph 35 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 35 of the Complaint.

36. Paragraph 36 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 36 of the Complaint.

PURPORTED RELEVANT GEOGRAPHIC MARKET

37. Paragraph 37 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 37, and specifically denies that the relevant geographic market is “no broader than Bergen County, New Jersey.”

38. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 38 of the Complaint as they pertain to the size of Bergen County and how it would compare to other locations in the United States. Englewood admits the remaining allegations contained in Paragraph 38 of the Complaint.

39. Paragraph 39 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 39 of the Complaint.

40. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in the first sentence of Paragraph 40 of the Complaint, and therefore denies

the same. Englewood further states that Paragraph 40 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the same.

41. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 41 of the Complaint as they pertain to patient preference and a hypothetical insurer, and therefore denies the same.

42. Englewood denies the allegations contained in Paragraph 42 of the Complaint and specifically denies that Bergen County is the “main area of competition” between any of HMMH’s hospitals and Englewood. Englewood lacks the knowledge or information sufficient to respond to the remaining allegations contained in Paragraph 42 of the Complaint as they pertain to HMMH, and therefore denies the same.

IV.

PURPORTED MARKET STRUCTURE AND THE PROPOSED TRANSACTION’S PURPORTED PRESUMPTIVE ILLEGALITY

43. Paragraph 43 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 43 of the Complaint, and therefore denies the same.

44. Paragraph 44 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 44 of the Complaint and specifically denies that the relevant geographic market is “no broader than Bergen County.”

45. Englewood states that Paragraph 45 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 45 of the Complaint.

V.

PURPORTED ANTICOMPETITIVE EFFECTS

46. Englewood states that Paragraph 46 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 46 of the Complaint.

A.

Competition among Hospitals Benefits Consumers

47. Englewood denies the allegations contained in Paragraph 47 of the Complaint, except to admit that, among other forms of competition, hospitals and health systems seek contracts with commercial insurers and seek to attract patients to their facilities.

48. Englewood denies the allegations contained in Paragraph 48 of the Complaint, except to admit that to become an in-network provider, a hospital or health system negotiates with a commercial insurer and, if mutually agreeable terms can be reached, enters into a contract.

49. Englewood denies the allegations contained in Paragraph 49 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 49 of the Complaint as they pertain to other firms, and therefore denies the same.

50. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 50 of the Complaint as they pertain to other firms, and therefore denies the same.

51. Englewood denies the allegations contained in Paragraph 51 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 51 of the Complaint as they pertain to other firms, and therefore denies the same.

52. Englewood denies the allegations contained in Paragraph 52 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 52 of the Complaint as they pertain to other firms, and therefore denies the same.

53. Englewood denies the allegations contained in Paragraph 53 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the generalized allegations contained in Paragraph 53 of the Complaint as they pertain to other firms, and therefore denies the same.

B.

**The Proposed Transaction Would Purportedly Eliminate Close Competition Between
HMH and Englewood**

54. Englewood denies the allegations contained in Paragraph 54 of the Complaint. Englewood further states that the Commission's selective quotation of unidentified written materials or communications, offered without context, is misleading as framed and Englewood respectfully refers the Court to the quoted documents.

55. Englewood denies the allegations contained in Paragraph 55 of the Complaint, and specifically denies that "[q]uantitative evidence confirms the closeness of competition between HMH and Englewood."

56. Englewood denies the allegations contained in Paragraph 56 of the Complaint, and specifically denies that there is “close head-to-head competition” between HMH and Englewood.

57. Englewood denies the allegations contained in Paragraph 57 of the Complaint, and specifically denies that “Englewood and HMH are important alternatives for insurers constructing networks in Bergen County.” Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 57 of the Complaint as they pertain to HMH, and therefore denies the same. Englewood further states that Paragraph 57 of the Complaint contains legal conclusions as to which no response is required.

C.

The Proposed Transaction Will Purportedly Eliminate Non-Price Competition

58. Englewood denies the allegations contained in Paragraph 58 of the Complaint, except to admit that there are several hospitals and health systems in New Jersey and New York that provide inpatient GAC services and compete with HMH, Englewood, or both.

59. Englewood denies the allegations contained in Paragraph 59 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 59 of the Complaint as they pertain to HMH, and therefore denies the same.

60. Englewood denies the allegations contained in Paragraph 60 of the Complaint, and specifically denies that there will be any reduction in the quality of medical care, facilities, or service offerings as a result of the Transaction.

VI.

PURPORTED ENTRY BARRIERS

61. Englewood denies the allegations contained in Paragraph 61 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the remaining allegations contained in Paragraph 61 of the Complaint as they pertain to other firms, and therefore denies the same.

62. Englewood denies the allegations contained in Paragraph 62 of the Complaint. Englewood lacks the knowledge or information sufficient to respond to the allegations contained in Paragraph 62 of the Complaint as they pertain to other firms, and therefore denies the same.

VII.

EFFICIENCIES

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

VIII.

PURPORTED LIKELIHOOD OF SUCCESS ON THE MERITS, BALANCE OF EQUITIES, AND NEED FOR RELIEF

64. Paragraph 64 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 64 of the Complaint.

65. Paragraph 65 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 65 of the Complaint, and specifically denies allegations that (a) the “Proposed Transaction would have anticompetitive effects” and that the relevant geographic market is “an area no broader than Bergen County”; (b) “[s]ubstantial and effective entry or expansion into the

relevant service and geographic markets is difficult, and would not be timely, likely, or sufficient to offset” any purported anticompetitive effects of the Proposed Transaction; and (c) the efficiencies that Englewood asserts as resulting from the Proposed Transaction are “speculative, not merger-specific, and are, in any event, insufficient as a matter of law” to justify the Transaction.

66. Paragraph 66 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 66 of the Complaint.

67. Paragraph 67 of the Complaint contains legal conclusions as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 67 of the Complaint.

68. Paragraph 68 of the Complaint contains legal conclusions and requests for relief as to which no response is required. To the extent a response is required, Englewood denies the allegations contained in Paragraph 68 of the Complaint.

ENGLEWOOD’S AFFIRMATIVE AND OTHER DEFENSES

Englewood asserts the following defenses, without assuming the burden of proof on such defenses that would otherwise rest with the Commission:

1. The Complaint fails to state a claim upon which relief can be granted.
2. The relief sought is contrary to the public interest. The proposed merger will be procompetitive and will provide significant consumer benefits, including but not limited to, enhanced quality of care and lower total cost of care.
3. The Complaint’s alleged relevant geographic market is improperly defined and fails as a matter of law. The FTC’s arbitrary selection of hospitals is inconsistent with market

realities, and a naked attempt to gerrymander a market that is both artificial and untethered to any known competitive constraints.

4. The Complaint fails to allege any plausible harm to competition.

5. The Complaint fails to allege any plausible harm to any consumers.

6. The Complaint fails to allege any plausible harm to consumer welfare.

7. The Complaint's alleged relevant product market is improperly defined and fails as a matter of law. The Complaint improperly focuses solely on inpatient GAC services, excluding all other healthcare services provided by HHM, EH and their many competitors, including but not limited to, outpatient and retail health care services.

8. The Complaint fails to allege undue share in any properly defined relevant market.

9. New entry and expansion by competitors can be timely, likely, and sufficient, such that it will ensure that there will be no harm to competition, consumers, or consumer welfare.

10. The insurers and other payors at issue in the Complaint have a variety of tools to ensure that they receive competitive pricing and terms for the products and services at issue in the Complaint.

11. The proposed transaction will be procompetitive and will result in substantial merger-specific pricing efficiencies, quality improvements, enhanced access to services, and other procompetitive effects, all of which will directly benefit insurers, employers, and patients in and around the New Jersey/New York Metropolitan area. Further, the proposed transaction will increase health insurance competition that will put downward pressure on health insurance prices. Englewood does not concede any of the anticompetitive effects proffered by the FTC;

moreover, the foregoing precompetitive benefits are substantial and will greatly outweigh any and all alleged anticompetitive effects.

12. Englewood has not knowingly or intentionally waived any applicable defenses, and it reserves the right to assert and rely upon other applicable defenses that may become available or apparent throughout the course of the action. Englewood reserves the right to amend, or seek to amend, its answer or affirmative defenses.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, having fully answered the Complaint, Englewood respectfully requests that the Court: (1) deny the Commission's contemplated relief; (2) dismiss the Complaint in its entirety with prejudice; (3) award Englewood its costs of suit, including experts' fees and reasonable attorneys' fees, as may be allowed by law; and (4) award each other or further relief as the Court may deem just and proper.

CERTIFICATION PURSUANT TO LOCAL RULE 11.2

Englewood, through its counsel, hereby certifies that, to the best of its knowledge, the subject matter of this proceeding is the subject of another pending court action, or any pending arbitration or administrative proceeding, as follows: an administrative action is pending before the Federal Trade Commission, Docket No. 9399, involving the same parties to this lawsuit.

DATE: January 15, 2021

Respectfully submitted,

s/ Angelo J. Genova

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Counsel for Defendant Englewood Healthcare Foundation

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 15, 2021, I delivered via the Court's electronic filing system a copy of the foregoing document to all counsel appearing in this action.

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