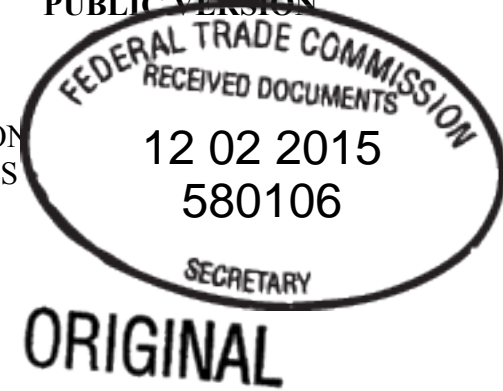


UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES

PUBLIC VERSION



In the Matter of

Cabell Huntington Hospital, Inc.
a corporation;

and

Pallottine Health Services, Inc.
a corporation;

and

St. Mary's Medical Center, Inc.
a corporation

Docket No. 9366

**ANSWER AND DEFENSES OF RESPONDENT
CABELL HUNTINGTON HOSPITAL, INC.**

Pursuant to Rule 3.12 of the Federal Trade Commission's (the "Commission's") Rules of Practice for Adjudicative Proceedings, Respondent Cabell Huntington Hospital, Inc. ("Cabell"), by and through its attorneys, admits, denies and avers as follows with respect to the Administrative Complaint ("Complaint") filed by the Commission:

Cabell lacks knowledge of and excludes for purposes of its answer, any information contained in or related to highly confidential information or documents provided to Cabell in connection with the Commission's investigation of the proposed transaction (the "Transaction") between Cabell, Pallottine Health Services, Inc., and St. Mary's Medical Center, Inc. ("St. Mary's") that was disclosed only to counsel. To the extent not specifically admitted in the following paragraphs, the allegations in the Complaint are denied.

I. NATURE OF THE CASE¹

1. Cabell denies the allegations set forth in paragraph 1 of the Complaint.
2. Cabell admits that Cabell and St. Mary's are general acute care hospitals and are located three miles apart in Huntington, West Virginia. Cabell admits that Cabell and St. Mary's

¹ For the Court's ease of reference, Respondent Cabell's Answer tracks the section headings of Petitioner's Complaint. In so doing, Cabell does not admit or concede the factual bases or legal conclusions subsumed by Petitioner's headings.

both provide inpatient and outpatient services. Cabell avers that it competes with multiple healthcare providers on an array of services, including but not limited to St. Mary's, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. Cabell denies the remaining allegations set forth in paragraph 2 of the Complaint.

3. Cabell avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 3 of the Complaint.

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

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

6. Cabell denies the allegations set forth in Paragraph 6 of the Complaint.

7. The allegations contained in the third sentence of paragraph 7 constitute conclusions of law to which no response is required. To the extent a response is deemed required, Cabell denies the allegations in that sentence. Cabell denies the remaining allegations set forth in paragraph 7 of the Complaint.

8. Cabell admits that King's Daughters is located in Kentucky. Cabell avers that it competes with multiple healthcare providers on an array of services, including but not limited to St. Mary's, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. Cabell avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 8 of the Complaint.

9. Cabell avers that the West Virginia Health Care Authority (the "WVHCA") regulates acute care hospital rates through rate review to protect the health and well-being of citizens of the state by guarding against unreasonable loss of economic resources and to ensure citizens' access to cost-effective, high-quality healthcare services. Cabell also admits that the

WVHCA utilizes a cost-based review system. Cabell denies the remaining allegations set forth in paragraph 9 of the Complaint.

10. Cabell avers that on July 31, 2015, Cabell and St. Mary's entered into an Assurance of Voluntary Compliance ("AVC") with the West Virginia Attorney General to remedy any purported risk of competitive harm from the Transaction. Cabell further avers that on November 4, 2015, Cabell and St. Mary's executed a revised AVC with the West Virginia Attorney General in order to clarify original provisions and expand upon the commitments made by the Parties that prevent an enhancement of market power post-transaction. Additionally, Cabell avers that the November 4, 2015 AVC defined key terms, eliminated the Hospitals' ability to exercise any purported enhanced market power from the Transaction, and extended the enforcement period from seven to ten years. Cabell also avers that Cabell entered into agreements including a Letter of Agreement ("LOA") between Cabell and [REDACTED], which ensures that the Transaction will not harm consumers. Cabell avers that paragraph 10 contains legal conclusions to which no response is required. To the extent a response is deemed required, Cabell denies those allegations and all remaining allegations set forth in paragraph 10 of the Complaint.

11. Cabell lacks knowledge or information sufficient to form a belief as to the entry or expansion of other providers in the Huntington area. Cabell denies the remaining allegations set forth in paragraph 11 of the Complaint.

12. Cabell denies the allegations set forth in paragraph 12 of the Complaint.

13. Cabell avers that the allegations set forth in the first sentence of paragraph 13 in the Complaint include legal conclusions for which no response is required. To the extent a response is deemed required, Cabell admits that, at present, it understands that a Certificate of Need from the WVHCA and approval from the Catholic Church are required, and denies all other remaining allegations set forth in paragraph 13 of the Complaint.

II. BACKGROUND

A. Jurisdiction and Venue

14. The allegations set forth in paragraph 14 of the Complaint constitute legal conclusions for which no response is required.

15. The allegations set forth in paragraph 15 of the Complaint constitute legal conclusions for which no response is required.

B. Respondents

16. Cabell admits the allegations set forth in Paragraph 16 of the Complaint.

17. Cabell admits the allegations set forth in paragraph 17 of the Complaint.

18. Upon information and belief, Cabell denies that PHS owns St. Joseph's Hospital in Buckhannon, West Virginia. Cabell admits all remaining allegations set forth in paragraph 18 of the Complaint.

19. Cabell lacks knowledge or information sufficient to form a belief as to the revenues of St. Mary's in the fiscal year ending September 30, 2014 set forth in paragraph 19 of the Complaint, and therefore denies those allegations. Cabell admits all remaining allegations in Paragraph 19 of the Complaint.

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

C. The Proposed Acquisition

21. Upon information and belief, Cabell admits the allegations set forth in paragraph 21 of the Complaint.

22. Cabell admits the allegations set forth in paragraph 22 of the Complaint.

23. Cabell admits the allegations set forth in paragraph 23 of the Complaint.

24. Cabell admits the allegations set forth in paragraph 24 of the Complaint.

25. Cabell avers that the allegations set forth in the first sentence in paragraph 25 of the Complaint are legal conclusions for which no response is required. Cabell denies that the WVHCA has continued the CON hearing for an indefinite period and avers that this hearing will take place on December 21 - 22, 2015. Cabell admits the allegations set forth in the second sentence of paragraph 25 of the Complaint.

26. Cabell avers that the allegations set forth in the first sentence in paragraph 26 of the Complaint are legal conclusions for which no response is required. Cabell denies the allegations set forth in the second sentence of paragraph 26 of the Complaint.

III. THE RELEVANT PRODUCT MARKETS

27. The allegations contained in paragraph 27 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Cabell denies those allegations and all remaining allegations set forth in paragraph 27 of the Complaint.

28. The allegations contained in paragraph 28 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Cabell denies the allegations set forth in paragraph 28 of the Complaint.

29. The allegations contained in paragraph 29 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Cabell denies those allegations and all remaining allegations set forth in paragraph 29 of the Complaint.

30. The allegations contained in paragraph 30 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Cabell denies those allegations and all remaining allegations set forth in paragraph 30 of the Complaint.

B. THE RELEVANT GEOGRAPHIC MARKETS

31. The Commission’s allegation of the relevant geographic market constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, Cabell denies that allegation. Cabell denies all remaining allegations in paragraph 31 of the Complaint.

32. The Commission’s allegation constitutes a legal conclusion to which no response is required. To the extent a response is deemed required, Cabell denies that allegation.

33. Cabell lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 33 of the Complaint, and therefore denies them.

34. Cabell denies the allegations contained in paragraph 34 of the Complaint.

35. Cabell lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 35 of the Complaint regarding how other hospitals “regard themselves,” and therefore denies that allegation. Cabell denies all remaining allegations in paragraph 35 of the Complaint.

36. Cabell avers that health plans have expressed enthusiastic support for the Transaction and have indicated that they do not believe it will produce higher rates. Cabell further avers that the Transaction will not result in higher rates for patients, and that patients will continue to have affordable access to quality healthcare services. Cabell denies all remaining allegations in paragraph 36 of the Complaint.

IV. MARKET STRUCTURE AND THE ACQUISITION’S PRESUMPTIVE ILLEGALITY

37. Cabell denies the allegations in paragraph 37 of the Complaint.

38. Cabell denies the allegations in paragraph 38 of the Complaint.

39. The allegations contained in paragraph 39 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Cabell denies those allegations.

40. Cabell denies that the HHIs alleged in paragraph 40 reflect the HHIs for the properly defined relevant service markets, and denies all remaining allegations set forth in paragraph 40 of the Complaint.

41. Cabell denies the allegations set forth in paragraph 41 of the Complaint.

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

43. The allegations contained in paragraph 43 of the Complaint constitute conclusions of law to which no response is required. To the extent a response is deemed required, Cabell denies those allegations and all remaining allegations set forth in paragraph 43 of the Complaint.

V. ANTICOMPETITIVE EFFECTS

A. Hospital Competition Yields Lower Prices and Higher Quality

44. Cabell lacks knowledge or information sufficient to form a belief as to the generic allegations set forth in paragraph 44 of the Complaint, and therefore denies those allegations.

45. Cabell admits that hospitals negotiate provider contracts with health plans. Cabell lacks knowledge or information sufficient to form a belief as to the remaining generic allegations set forth in paragraph 45 of the Complaint, and therefore denies those allegations.

46. Cabell lacks knowledge or information sufficient to form a belief as to the generic allegations included in paragraph 46 of the Complaint, and therefore denies those allegations.

47. Cabell lacks knowledge or information sufficient to form a belief as to the generic allegations set forth in paragraph 47 of the Complaint, and therefore denies those allegations.

48. Cabell lacks knowledge or information sufficient to form a belief as to the generic allegations set forth in paragraph 48 of the Complaint, and therefore denies those allegations.

49. Cabell lacks knowledge or information sufficient to form a belief as to the generic allegations set forth in paragraph 49 of the Complaint, and therefore denies those allegations.

50. Cabell lacks knowledge or information sufficient to form a belief as to the generic allegations set forth in paragraph 50 of the Complaint, and therefore denies those allegations.

51. Cabell lacks knowledge or information sufficient to form a belief as to the generic allegations set forth in paragraph 51 of the Complaint, and therefore denies those allegations.

52. Cabell admits that the WVHCA performs rate review in an effort to constrain the rising cost of healthcare and to assure reasonable access to necessary and quality health services

for its citizens. Cabell denies all remaining allegations set forth in paragraph 52 of the Complaint.

53. Cabell lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 53 of the Complaint, and therefore denies those allegations.

54. Cabell lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 54 of the Complaint, and therefore denies those allegations.

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

B. The Acquisition Would Eliminate Price Competition

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

57. Cabell denies the allegations set forth in paragraph 57 of the Complaint.

58. Cabell avers that it competes with multiple healthcare providers on an array of services, including but not limited to St. Mary's, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. Cabell avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 58 of the Complaint.

59. Cabell avers that it competes with multiple healthcare providers on an array of services, including but not limited to St. Mary's, King's Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. Cabell lacks knowledge or information sufficient to form a belief as to the allegations related to St. Mary's negotiation with

health plans set forth in paragraph 59 of the Complaint, and therefore denies them. Cabell avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 59 of the Complaint.

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

61. Cabell admits that in 2010 the hospital was not included in [REDACTED] network. Cabell denies the remaining allegations in paragraph 61 of the Complaint.

62. Cabell admits the allegations contained in the first sentence set forth in paragraph 62 of the Complaint. Cabell denies the remaining allegations set forth in paragraph 62 of the Complaint.

63. Cabell denies the allegations set forth in paragraph 63 of the Complaint.

64. Cabell avers that health plans have actively encouraged the Transaction. Cabell denies the remaining allegations set forth in paragraph 64 of the Complaint.

65. Cabell avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 65 of the Complaint.

66. Cabell avers that health plans have actively encouraged the Transaction. Cabell avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 66 of the Complaint.

67. Cabell avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 67 of the Complaint.

68. Cabell avers that the Commission’s selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the allegations set forth in paragraph 68 of the Complaint.

69. Cabell denies the allegations set forth in paragraph 69 of the Complaint.

70. Cabell admits that it entered into a PHO named Tri-State Health Partners, Inc. (“Tri-State”) with other partners including St. Mary’s. Cabell denies the remaining allegations set forth in paragraph 70 of the Complaint.

71. Cabell avers that the Commission’s selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 71 of the Complaint.

72. Cabell admits that it has contracts with multiple health plans including, but not limited to, [REDACTED]. Cabell avers that contracts with health plans often include provisions which allow for unilateral termination of the contract by the health plan. Cabell denies the remaining allegations set forth in paragraph 72 of the Complaint.

73. Cabell avers that the Commission’s selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 73 of the Complaint.

74. Cabell admits that it utilizes billboards in its marketing strategy. Cabell lacks knowledge or information sufficient to form a belief as to the allegations related to St. Mary’s use of billboards set forth in paragraph 74 of the Complaint, and therefore denies them. Cabell denies the remaining allegations set forth in paragraph 74 of the Complaint.

75. Cabell avers that the Commission’s selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 75 of the Complaint.

76. Cabell denies the allegations set forth in paragraph 76 of the Complaint.

C. The Transaction Would Eliminate Quality and Service Competition

77. Cabell avers that it competes with multiple healthcare providers on an array of services, including but not limited to St. Mary’s, King’s Daughters Medical Center, Our Lady of Bellefonte Hospital, Charleston Area Medical Center, Holzer Health System, St. Francis Hospital, CAMC General Hospital, and Thomas Memorial Hospital. Cabell avers that the

Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 77 of the Complaint.

78. Cabell avers that the Commission's selective characterization and quotation of unidentified documents and testimony, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell denies the allegations set forth in paragraph 78 of the Complaint.

79. Cabell avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell lacks knowledge or information sufficient to form a belief as to the allegations related to St. Mary's practices set forth in paragraph 79 of the Complaint, and therefore denies them. Cabell denies the remaining allegations set forth in paragraph 79 of the Complaint.

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

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

82. Cabell admits that it utilizes da Vinci robots in its provision of surgical services. Cabell further admits that da Vinci robots allow for less invasive surgeries. Cabell denies the allegations set forth in paragraph 82 of the Complaint.

83. Cabell avers that it received CON approval to offer PCI services. Cabell admits that St. Mary's opposed Cabell's CON application to offer PCI services. Cabell denies the remaining allegations set forth in paragraph 83 of the Complaint.

84. Cabell avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if

identified, for a complete and accurate description of their contents. Cabell denies the remaining allegations set forth in paragraph 84 of the Complaint.

85. Cabell lacks knowledge or information sufficient to form a belief as to the allegations related to St. Mary's plans set forth in paragraph 85 of the Complaint, and therefore denies them. Cabell denies the remaining allegations set forth in paragraph 85 of the Complaint.

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

86. Cabell avers that the LOA with [REDACTED] and the AVCs with the West Virginia Attorney General are documents which speak for themselves. Further, Cabell avers that the Transaction will benefit consumers and these documents will guarantee these benefits. Cabell denies the remaining allegations set forth in paragraph 86 of the Complaint.

87. Cabell admits that Cabell entered into a LOA with [REDACTED] in November 2014. Cabell avers that [REDACTED] publicly supported this Transaction before the LOA was signed. Cabell further avers that the Commission's selective characterization and quotation of unidentified communications, offered without context, is misleading as framed in the Complaint, and Cabell respectfully refers the Court to the quoted or purportedly referenced documents, if identified, for a complete and accurate description of their contents. Cabell further responds that the LOA speaks for itself, and denies the allegations of paragraph 87 inconsistent therewith. Cabell denies the remaining allegations set forth in paragraph 87 of the Complaint.

88. Cabell avers that the AVCs with the West Virginia Attorney General speak for themselves. Further, Cabell avers that these documents were executed to prevent any purported harm to consumers. Cabell denies the remaining allegations set forth in paragraph 88 of the Complaint.

89. Cabell avers that the allegations contained in paragraph 89 constitute conclusions of law to which no response is required. Cabell further responds that the Massachusetts court decision speaks for itself, and denies the allegations of paragraph 89 inconsistent therewith. To the extent a response is deemed required, Cabell denies the allegations.

90. Cabell denies the allegations set forth in paragraph 90 of the Complaint.

91. Cabell denies the allegations set forth in paragraph 91 of the Complaint.

92. Cabell avers that the AVCs are documents which speak for themselves. Cabell denies the allegations set forth in paragraph 92 of the Complaint.

93. Cabell avers that the LOA and AVCs are documents which speak for themselves. Cabell denies the remaining allegations set forth in paragraph 93 of the Complaint.

94. Cabell denies the allegations set forth in paragraph 94 of the Complaint.

VI. ENTRY BARRIERS

95. Cabell denies the allegations set forth in paragraph 95 of the Complaint.

96. Cabell also avers that the first sentence in paragraph 96 of the Complaint contains legal conclusions to which no response is required. Cabell avers that the cost to construct and operate a new hospital is dependent on numerous factors, and lacks knowledge or information sufficient to form a belief as to the Commission's allegations regarding the cost to construct and operate a new hospital, and therefore denies that allegation. Cabell denies the remaining allegations set forth in paragraph 96 of the Complaint.

97. Cabell lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 97 of the Complaint, and therefore denies them.

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

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

100. Cabell lacks knowledge or information sufficient to form a belief as to the allegations set forth in paragraph 100 of the Complaint, and therefore denies them.

101. Cabell avers that the first sentence in paragraph 101 contains legal conclusions to which no response is required. Cabell lacks knowledge or information sufficient to form a belief as to whether an unspecified outpatient surgical services provider will open an outpatient surgery center, and therefore denies those allegations. Cabell avers that the cost to open an outpatient surgery center is dependent on numerous factors, and lacks knowledge or information sufficient to form a belief as to the Commission's allegations related to the cost to construct an outpatient surgery center, and therefore denies those allegations. Cabell further lacks knowledge or information sufficient to form a belief as to the time and cost to open Three Gables, and therefore denies those allegations. Cabell admits that West Virginia's CON laws apply to outpatient facilities and services. Cabell denies the remaining allegations set forth in paragraph 101 of the Complaint.

VII. EFFICIENCIES

102. Cabell denies the allegations set forth in paragraph 102 of the Complaint.

103. Cabell avers that it has significant evidence demonstrating the efficiencies which could result from the Transaction. Cabell denies the remaining allegations set forth in paragraph 103 of the Complaint.

104. Cabell avers that it has significant evidence demonstrating the efficiencies which could result from the Transaction. Cabell lacks knowledge or information sufficient to form a belief as to the Commission's allegations regarding potential savings from the purported acquisition of St. Mary's by an unidentified purchaser, and therefore denies them. Cabell denies the remaining allegations set forth in paragraph 104 of the Complaint.

105. Cabell denies the allegations set forth in paragraph 105 of the Complaint.

106. Cabell avers that it has significant evidence demonstrating the quality enhancement opportunities which could result from the Transaction. Cabell denies the remaining allegations set forth in paragraph 106 of the Complaint.

VIII. VIOLATION

COUNT I - ILLEGAL AGREEMENT

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

108. Cabell avers that the allegations contained in paragraph 108 constitute conclusions of law to which no response is required. To the extent a response is deemed required, Cabell denies the allegations.

COUNT II - ILLEGAL ACQUISITION

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

110. Cabell avers that the allegations contained in paragraph 110 constitute conclusions of law to which no response is required. To the extent a response is deemed required, Cabell denies the allegations.

AFFIRMATIVE AND OTHER DEFENSES

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

FIRST DEFENSE

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

SECOND DEFENSE

Granting the relief sought is contrary to the public interest.

THIRD DEFENSE

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

FOURTH DEFENSE

The Complaint fails to adequately allege a relevant service market.

FIFTH DEFENSE

The Complaint fails to allege harm to competition.

SIXTH DEFENSE

The Complaint fails to allege harm to any consumers.

SEVENTH DEFENSE

The Complaint fails to allege harm to consumer welfare.

EIGHTH DEFENSE

Any purported alleged harm to potential competition is not actionable.

NINTH DEFENSE

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

TENTH DEFENSE

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

ELEVENTH DEFENSE

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

TWELFTH DEFENSE

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

RESERVATION OF RIGHTS TO ASSERT ADDITIONAL DEFENSES

Cabell 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. Cabell reserves the right to amend, or seek to amend, its answer or affirmative defenses.

NOTICE OF CONTEMPLATED RELIEF

WHEREFORE, CABELL requests that the Commission enter judgment in its favor as follows:

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

Dated: November 25, 2015

Respectfully submitted,

/s/ Geoffrey S. Irwin

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CERTIFICATE OF SERVICE

I hereby certify that on November 25, 2015, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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

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

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

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Notice of Electronic Service

I hereby certify that on December 02, 2015, I filed an electronic copy of the foregoing CHHI's Redacted Answer And Defenses, with:

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I hereby certify that on December 02, 2015, I served via E-Service an electronic copy of the foregoing CHHI's Redacted Answer And Defenses, upon:

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