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13 **UNITED STATES DISTRICT COURT**  
14 **NORTHERN DISTRICT OF CALIFORNIA**  
15 **SAN FRANCISCO DIVISION**

16 **FEDERAL TRADE COMMISSION**

17 and

18 **STATE OF CALIFORNIA,**

19 Plaintiffs,

20 v.

21 **JOHN MUIR HEALTH**

22 and

23 **TENET HEALTHCARE CORPORATION,**

24 Defendants.

Case No. 3:23-cv-05952

**COMPLAINT FOR A TEMPORARY  
RESTRAINING ORDER  
AND PRELIMINARY INJUNCTION  
PURSUANT TO SECTION 13(B)  
OF THE FEDERAL TRADE  
COMMISSION ACT**

**REDACTED VERSION OF DOCUMENT  
SOUGHT TO BE SEALED**

25  
26 Plaintiffs Federal Trade Commission (“FTC” or “Commission”) and the State of  
27 California petition this Court to enter a stipulated temporary restraining order and grant a  
28 preliminary injunction enjoining Defendants John Muir Health (“John Muir”) and Tenet  
COMPLAINT FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION  
CASE NO. 3:23-cv-05952

1 Healthcare Corporation (“Tenet”), including their agents, divisions, parents, subsidiaries,  
2 affiliates, partnerships and joint ventures, from consummating their proposed transaction under  
3 which John Muir would become the sole owner of San Ramon Regional Medical Center, LLC  
4 (the “Proposed Acquisition”). The Proposed Acquisition threatens to eliminate substantial  
5 competition between the San Ramon Regional Medical Center and John Muir’s nearby hospitals,  
6 raise prices for insurers and their enrollees, and significantly increase concentration in an already  
7 highly concentrated market. Defendants have represented that unless the Court grants the relief  
8 Plaintiffs seek, Defendants will consummate the Proposed Acquisition as soon as possible after  
9 11:59 p.m. on November 22, 2023. Plaintiffs seek this provisional relief under Section 13(b) of  
10 the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and Section 16 of the  
11 Clayton Act, 15 U.S.C. § 26.

12 Plaintiffs require the aid of this Court to maintain the status quo and prevent interim harm  
13 to competition during the pendency of an administrative proceeding on the merits. The  
14 Commission has already initiated that administrative proceeding pursuant to Sections 7 and 11 of  
15 the Clayton Act, 15 U.S.C. §§ 18, 21, and Section 5 of the FTC Act, 15 U.S.C. § 45, by filing an  
16 administrative complaint on November 17, 2023. The administrative hearing on the merits will  
17 begin on April 17, 2024. That administrative hearing will determine the legality of the Proposed  
18 Acquisition and will provide all parties a full opportunity to conduct discovery, depose  
19 witnesses, and present testimony and other evidence on the likely competitive effects of the  
20 Proposed Acquisition.

### 21 NATURE OF THE CASE

22 1. John Muir, one of the largest and most expensive hospital systems in Northern  
23 California, seeks to acquire full control of the San Ramon Regional Medical Center (“SRRMC”).  
24 If allowed to proceed, the Proposed Acquisition threatens to substantially lessen competition for  
25 critical healthcare services along the I-680 corridor, which spans portions of California’s Contra  
26 Costa and Alameda Counties.

27 2. Today, John Muir is the largest provider of inpatient general acute care (“GAC”)  
28 hospital services along the I-680 corridor. John Muir provides inpatient GAC services through its  
COMPLAINT FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION  
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1 two hospitals: the Walnut Creek and Concord Medical Centers. The John Muir hospitals are  
2 known for charging high prices. For example, a 2020 New York Times article stated: “John Muir  
3 Health . . . [is] the most costly system in the nation. Private insurers pay its hospitals four times  
4 what Medicare reimburses for care.” Multiple insurers who offer health plans to individuals  
5 along the I-680 corridor confirm that John Muir’s hospitals are more expensive than other  
6 facilities in the area.

7 3. John Muir can extract these high prices from insurers because competition in the  
8 area is so limited. Just a handful of hospitals other than John Muir’s sit within the I-680 corridor;  
9 one of those hospitals is SRRMC. As a result, insurers need John Muir’s hospitals in their health  
10 plan networks to market a successful product to consumers who live along the I-680 corridor.

11 4. John Muir now seeks to enhance and expand its commanding position in the I-680  
12 corridor by acquiring SRRMC, a nearby hospital operated by Tenet. Today, SRRMC is one of  
13 John Muir’s few meaningful competitors. SRRMC sits just 14 miles south of John Muir’s  
14 flagship hospital in Walnut Creek and provides high-quality care.

15 5. If John Muir were permitted to acquire SRRMC, insurers would have fewer  
16 competing alternatives for inpatient GAC services in the I-680 corridor. As a result of this  
17 substantial lessening of competition, John Muir would be able to demand higher rates from  
18 insurers for the combined entity’s services due to an increase in its bargaining leverage in rate  
19 negotiations with insurers. Higher rates are expected to lead to higher insurance premiums, co-  
20 pays, deductibles, and other out-of-pocket costs or reduced benefits for commercial health  
21 insurance enrollees.

22 6. SRRMC also competes with John Muir for patients by improving its quality,  
23 service offerings, and facilities. These investments at SRRMC, and the competition that prompts  
24 them, provide a meaningful benefit to SRRMC’s patients. The Proposed Acquisition will  
25 immediately eliminate this competition, reducing healthcare investment and improvement along  
26 the I-680 corridor.

27 7. Finally, the Proposed Acquisition is presumptively illegal because it will  
28 significantly increase concentration in the already highly concentrated I-680 corridor market for  
COMPLAINT FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION  
CASE NO. 3:23-cv-05952

1 inpatient GAC services sold to commercial insurers and their enrollees. Post-acquisition, John  
2 Muir will control more than 50% of inpatient GAC services offered in the I-680 corridor as  
3 measured by hospital discharge data. These high market shares and concentration levels  
4 underscore the competition the Proposed Acquisition will eliminate and render the Proposed  
5 Acquisition presumptively unlawful under the relevant caselaw. An array of qualitative and  
6 quantitative evidence confirms this strong presumption of illegality.

7 8. The parties have stipulated to entry of a temporary restraining order to preserve  
8 the status quo and protect competition while the Court considers the Commission's application  
9 for a preliminary injunction. Under this temporary restraining order, Defendants cannot  
10 consummate the Proposed Acquisition until the fifth business day after the Court rules on the  
11 Commission's request for a preliminary injunction or until after the date set by the Court,  
12 whichever is later.

13 9. Preliminary injunctive relief is similarly necessary to preserve the status quo and  
14 protect competition during the Commission's ongoing administrative proceeding. Allowing the  
15 Proposed Acquisition to proceed while the Commission is assessing the Proposed Acquisition's  
16 potential anticompetitive effects would undermine the Commission's ability to remedy the  
17 anticompetitive effects of the Proposed Acquisition if it is found unlawful after a full trial on the  
18 merits and any subsequent appeals and would harm the public's interest in effective enforcement  
19 of the antitrust laws.

## 20 **JURISDICTIONAL STATEMENT**

### 21 **Jurisdiction**

22 10. The Court has jurisdiction under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b),  
23 Section 16 of the Clayton Act, 15 U.S.C. § 26, and under 28 U.S.C. §§ 1331, 1337, and 1345.  
24 This is a civil action arising under the Acts of Congress protecting trade and commerce against  
25 restraints and monopolies, and is brought by an agency of the United States authorized to bring  
26 this suit.

27 11. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), provides:

28 Whenever the Commission has reason to believe—

1 (1) that any person, partnership, or corporation is violating, or is about to  
2 violate, any provision of law enforced by the Federal Trade Commission, and

3 (2) that the enjoining thereof pending the issuance of a complaint by the  
4 Commission and until such complaint is dismissed by the Commission or set  
5 aside by the court on review, or until the order of the Commission made  
6 thereon has become final, would be in the interest of the public—

7 the Commission by any of its attorneys designated by it for such purpose  
8 may bring suit in a district court of the United States to enjoin any such act or  
9 practice. Upon a proper showing that, weighing the equities and considering  
10 the Commission’s likelihood of ultimate success, such action would be in the  
11 public interest, and after notice to the defendant, a temporary restraining  
12 order or a preliminary injunction may be granted without bond. . . .

13 12. Defendants and their relevant operating entities and subsidiaries are, and at all  
14 relevant times have been, engaged in activities in or affecting “commerce” as defined in Section  
15 4 of the FTC Act, 15 U.S.C. § 44, and Section 1 of the Clayton Act, 15 U.S.C. § 12. Defendants  
16 are, and at all relevant times have been, engaged in commerce in the State of California.

17 13. In conjunction with the Commission, the State of California brings this action for  
18 a preliminary injunction under Section 16 of the Clayton Act, 15 U.S.C. § 26, to prevent and  
19 restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18, pending the  
20 Commission’s administrative trial. The State of California has standing to bring this action  
21 because the Proposed Acquisition would cause antitrust injury in California for inpatient GAC  
22 services sold to commercial insurers and their enrollees.

23 **Venue**

24 14. Defendants transact business in the Northern District of California. The FTC Act,  
25 15 U.S.C. § 53(b), also authorizes nationwide service of process. Defendants are therefore  
26 subject to personal jurisdiction in the Northern District of California. Fed. R. Civ. P. 4(k)(1)(C).  
27 Venue is proper in the Northern District of California under 28 U.S.C. § 1391(b) and (c), as well  
28 as under 15 U.S.C. § 53(b).

**Divisional Assignment**

15. Assignment to the San Francisco Division is proper. This action arises in Contra  
Costa County because a substantial part of the events giving rise to these claims occurred in  
Contra Costa County, where Defendant John Muir is headquartered.

**THE PARTIES**

1  
2 16. Plaintiff Federal Trade Commission is an administrative agency of the United  
3 States government, established, organized, and existing pursuant to the FTC Act, 15 U.S.C. § 41  
4 *et seq.* The Commission is vested with authority and responsibility for enforcing, *inter alia*,  
5 Section 7 of the Clayton Act, 15 U.S.C. § 18, and Section 5 of the FTC Act, 15 U.S.C. § 45.

6 17. Plaintiff State of California is a sovereign state of the United States. This action is  
7 brought by and through its Attorney General in his sovereign capacity and as *parens patriae* on  
8 behalf of his citizens, general welfare, and economy pursuant to Section 16 of the Clayton Act,  
9 15 U.S.C. § 26.

10 18. Defendant Tenet Healthcare Corporation is a public company incorporated in  
11 Nevada with its headquarters in Dallas, Texas. Tenet operates 61 general acute care hospitals and  
12 hundreds of outpatient facilities nationally, including numerous facilities in California. Tenet  
13 operates SRRMC, a 123-bed hospital located just off of I-680 in San Ramon, California and  
14 roughly 14 miles south of John Muir’s Walnut Creek Medical Center. Before 2013, Tenet was  
15 the sole owner of SRRMC. In 2013, pursuant to a series of joint venture agreements, Tenet  
16 transferred a 49% non-controlling interest in San Ramon Regional Medical Center, LLC, the  
17 entity that owns SRRMC, to John Muir. Tenet currently holds a 51% controlling interest in San  
18 Ramon Regional Medical Center, LLC and continues to operate SRRMC. As operator of  
19 SRRMC, Tenet is solely responsible for [REDACTED]

20 [REDACTED]  
21 19. Defendant John Muir Health is a California non-profit corporation headquartered  
22 in Walnut Creek, California. John Muir operates two hospitals that provide inpatient GAC  
23 services along the I-680 corridor. John Muir’s Walnut Creek Medical Center, a 554-bed facility,  
24 is the area’s largest hospital. John Muir’s Concord Medical Center is a 244-bed facility located  
25 less than 10 miles from its Walnut Creek Medical Center. John Muir also manages physician  
26 practices of approximately 300 physicians and negotiates contracts on behalf of approximately  
27 700 additional physicians through the John Muir Health Physician Network. John Muir further  
28 operates an array of outpatient facilities including urgent care clinics, imaging centers, and an

1 outpatient surgery center. John Muir holds a 49% non-controlling interest in San Ramon  
2 Regional Medical Center, LLC, the entity that owns SRRMC.

3 **THE PROPOSED ACQUISITION**

4 20. On January 10, 2023, John Muir and Tenet entered into an Equity Interest  
5 Purchase Agreement (“Purchase Agreement”) whereby John Muir agreed to acquire Tenet’s  
6 controlling interest in San Ramon Regional Medical Center, LLC, together with other assorted  
7 assets, for approximately \$142.5 million.

8 21. Under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. § 18a, and a  
9 timing agreement between Defendants and Commission staff, unless this Court temporarily  
10 restrains and preliminarily enjoins Defendants, they would be free to consummate the Proposed  
11 Acquisition after 11:59 p.m. on November 22, 2023.

12 **COMPETITION BETWEEN HOSPITALS BENEFITS PATIENTS**

13 22. Hospital competition to provide inpatient GAC services for commercially insured  
14 patients occurs in two distinct but related stages. In the first stage of hospital competition,  
15 hospitals compete to be included in insurers’ health plans. To become an “in-network” provider,  
16 a hospital negotiates with an insurer and enters a contract if it can agree with the insurer on  
17 terms. The hospital’s reimbursement rates for services rendered to a health plan’s enrollees are a  
18 central component of those negotiations.

19 23. Insurers attempt to contract with local hospitals (and other healthcare providers)  
20 that offer services that current or prospective members of the health plan want. In-network  
21 hospitals are typically much cheaper for health-plan enrollees to seek care from than an out-of-  
22 network hospital. Unsurprisingly, a hospital will attract more of a health plan’s enrollees when it  
23 is in-network. Hospitals therefore have an incentive to offer competitive terms and  
24 reimbursement rates to induce the insurer to include the hospital in its health-plan network.

25 24. From the insurer’s perspective, having hospitals in-network enables the insurer to  
26 assemble a health-plan provider network in a particular geographic area that is attractive to  
27 current and prospective enrollees, typically local employers and their employees.



1           25.     A hospital has significant bargaining leverage with insurers if its absence would  
2 make an insurer's health-plan network substantially less attractive (and therefore less  
3 marketable) to its current and prospective enrollees. This relative attractiveness to the insurer  
4 depends largely on whether other nearby hospitals could serve as viable in-network substitutes in  
5 the eyes of the plan's enrollees. The presence of alternative, conveniently located, high-quality  
6 competitors thus limits the bargaining leverage of a hospital in negotiations with the insurer.  
7 Where there are fewer meaningful alternatives, and therefore less competition, a hospital will  
8 have greater bargaining leverage to demand and obtain higher reimbursement rates and other  
9 advantageous contract terms.

10           26.     A merger involving hospitals that insurers and their enrollees consider substitutes  
11 increases the combined hospitals' bargaining leverage because it eliminates a previously  
12 available alternative for the insurers and enrollees. Such a merger may substantially lessen  
13 competition by increasing the merged entity's incentive and ability to raise prices or reduce  
14 quality, because the merger eliminates an available alternative that an insurer could otherwise  
15 offer (or threaten to offer) its health-plan members in response to increased prices or a reduction  
16 in service.

17           27.     Increases in hospital reimbursement rates have a significantly negative impact on  
18 insurers' health plan enrollees, such as through higher cost-sharing payments or fewer benefits.  
19 For fully insured employers, increased healthcare costs would come in the form of higher  
20 premiums. Self-insured employers would fully bear those increased healthcare costs because  
21 they pay for claims directly. Individual patients also could feel the burden of increased costs in  
22 the form of higher insurance premiums, co-pays, deductibles, or other out-of-pocket costs.

23           28.     In the second stage of competition, hospitals compete to attract patients to their  
24 facilities by offering convenient, high-quality healthcare services. Patients often face similar out-  
25 of-pocket costs to access in-network providers. As a result, in-network hospitals often compete  
26 on non-price features, such as location, quality of care, access to services and technology,  
27 reputation, physicians and faculty members, amenities, conveniences, and patient satisfaction.

28 This competition benefits all patients, regardless of whether those patients are covered by



1 commercial insurance, Medicare, Medi-Cal, or no insurance at all. A merger of competing  
2 hospitals eliminates this form of non-price competition between the hospitals.

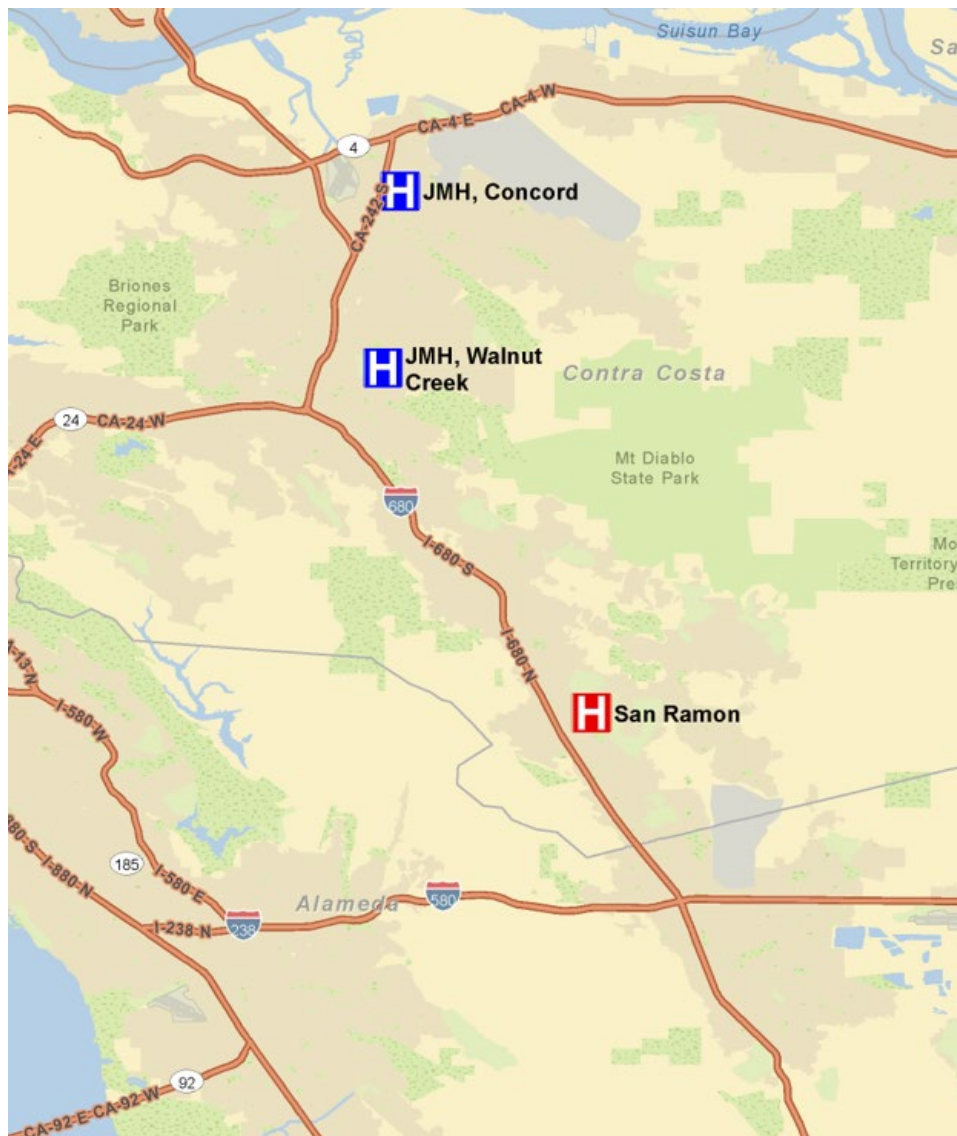
3 **THE PROPOSED ACQUISITION WILL ELIMINATE DIRECT**  
4 **COMPETITION BETWEEN JOHN MUIR AND SRRMC**

5 29. Today, competition drives SRRMC to charge lower rates to many commercial  
6 insurers for inpatient GAC services than John Muir charges for its hospitals.

7 30. John Muir can charge higher rates to insurers for inpatient GAC services than  
8 SRRMC because of John Muir's size and significance in the I-680 corridor. Travel in and out of  
9 the I-680 corridor is slow and burdensome. Patients in the area prefer to receive health care close  
10 to their homes. John Muir's hospitals are large, conveniently located facilities in the I-680  
11 corridor. John Muir also faces limited competitive pressure from the handful of other hospitals in  
12 the I-680 corridor. As a result, most insurers view John Muir's hospitals as vital to successfully  
13 marketing health plans to consumers who live in the I-680 corridor and satisfying California's  
14 health insurance network adequacy requirements. Insurers' views regarding the importance of  
15 John Muir's hospitals provide John Muir with significant leverage when negotiating rates with  
16 insurers. John Muir's high rates demonstrate this leverage in action.

17 31. In contrast, SRRMC is a smaller hospital within the I-680 corridor that lacks the  
18 leverage over insurers to demand the rates that John Muir charges. This dynamic drives SRRMC  
19 to compete and provide a meaningful alternative for insurers seeking to market health plans in  
20 the I-680 corridor.

1           32.     The following map illustrates where John Muir’s Walnut Creek and Concord  
2 Medical Centers and SRRMC sit along highway I-680:



1 33. Defendants know that inpatient GAC services at John Muir’s facilities are  
2 significantly more expensive than at SRRMC. A financial performance improvement document

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED] That document reflects that John Muir charges rates to commercial insurers  
7 that are [REDACTED] SRRMC:

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 34. By eliminating SRRMC as a competitive alternative to John Muir’s hospitals, the  
13 Proposed Acquisition will exacerbate John Muir’s already significant leverage over insurers that  
14 allows it to demand some of the highest rates in the country. The most pronounced price increase  
15 resulting from the elimination of this competition can be expected at SRRMC. Today, SRRMC  
16 may lack the ability to negotiate higher rates with insurers, but if the Proposed Acquisition is  
17 allowed to close, John Muir will be able to leverage its control of an even greater proportion of  
18 the I-680 corridor’s hospitals when negotiating for rates at SRRMC.

19 35. Tenet recognized this possibility when [REDACTED]

20 [REDACTED] In particular, Tenet modeled that John Muir could [REDACTED]

21 [REDACTED]

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

27 36. Econometric evidence confirms that after the Proposed Acquisition, John Muir  
28 will have the incentive and ability to raise prices at SRRMC.

1 37. In addition to causing higher prices, the Proposed Acquisition will immediately  
2 eliminate competition between SRRMC and John Muir that has spurred investment to improve  
3 the quality of inpatient GAC services in the I-680 corridor.

4 38. Currently, SRRMC competes directly with John Muir by improving the quality  
5 and variety of its services to attract patients away from John Muir's hospitals.

6 39. For example, in 2022, SRRMC management requested approval to acquire a  
7 [REDACTED] The [REDACTED]  
8 facilitates quicker treatment decisions by pathologists and surgeons. Competition with John Muir  
9 was a key factor that motivated SRRMC's management to seek the [REDACTED] ; [REDACTED]

10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED] In 2023, SRRMC  
15 acquired the [REDACTED], enabling its physicians to diagnose [REDACTED] earlier and  
16 more accurately, directly benefiting SRRMC's patients.

17 40. Similarly, in 2019, SRRMC staff requested and received approval for tools used  
18 in [REDACTED]. To justify this capital expenditure, SRRMC's CEO wrote:

19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 41. [REDACTED]  
27 [REDACTED] improvement to services and facilities to attract  
28

1 patients that otherwise would seek treatment at John Muir’s hospitals. This competition has led  
2 to concrete improvements in quality of care at SRRMC that have directly benefited its patients.

3 42. The Proposed Acquisition will immediately eliminate this valuable and  
4 substantial competition. Once it acquires SRRMC, John Muir will have less incentive to invest in  
5 further improving services at SRRMC to compete with services offered at John Muir’s other  
6 facilities.

7 43. Because the Proposed Acquisition will eliminate substantial competition between  
8 SRRMC and John Muir for inpatient GAC services sold to commercial insurers and their  
9 enrollees in the I-680 corridor, the Proposed Acquisition is unlawful.

10 **THE PROPOSED ACQUISITION WILL SIGNIFICANTLY INCREASE**  
11 **CONCENTRATION IN A HIGHLY CONCENTRATED MARKET**

12 44. In addition to evidence of direct competition between SRRMC and John Muir’s  
13 hospitals that the Proposed Acquisition will eliminate immediately, quantitative evidence reflects  
14 that the Proposed Acquisition will significantly increase concentration in the already highly  
15 concentrated market for inpatient GAC services sold to commercial insurers and their enrollees  
16 in the I-680 corridor, and therefore is presumptively unlawful.

17 **The Relevant Service Market: Inpatient GAC**

18 **Services Sold to Commercial Insurers and Their Enrollees**

19 45. Inpatient GAC services sold to commercial insurers and their enrollees is a  
20 relevant service market in which to assess the Proposed Acquisition’s effect on competition.

21 46. Inpatient GAC services are medical, surgical, and diagnostic services requiring an  
22 overnight hospital stay. Inpatient GAC services comprise a broad cluster of hospital services for  
23 which competitive conditions are substantially similar. Examples of inpatient GAC services  
24 include complex surgeries such as neural or cardiac surgery, childbirth, treatment of serious  
25 illnesses and infections, and some emergency care. Inpatient GAC services are required by  
26 distinct customers: individuals who need medical, surgical, and diagnostic services that  
27 necessitate an overnight hospital stay. Inpatient GAC services are provided by specialized  
28 providers: acute care hospitals. Due to the specialized facilities, regulatory and licensing

1 requirements, and high level of care involved, inpatient GAC services have prices that are  
2 distinct from and relatively insensitive to price changes for other medical services, such as  
3 outpatient services. Industry participants, including Defendants, recognize inpatient GAC  
4 services as a distinct category of services in the ordinary course of their business.

5 47. Here, inpatient GAC services include all overlapping inpatient GAC services that  
6 both John Muir and SRRMC sell to commercial insurers and provide to their enrollees.

7 48. Although the Proposed Acquisition could be analyzed separately for each of the  
8 many individual inpatient GAC services Defendants offer, it is appropriate to assess competitive  
9 effects and calculate market concentration for inpatient GAC services as a cluster of services  
10 because these services are offered under substantially similar competitive conditions. Grouping  
11 the hundreds of individual inpatient GAC services into a cluster for analytical convenience  
12 enables the efficient evaluation of the likelihood of a substantial lessening of competition  
13 without forfeiting the accuracy of the overall analysis and reflects commercial and competitive  
14 realities.

15 49. Outpatient services (i.e., services that do not require an overnight hospital stay  
16 such as routine physical exams, bloodwork, and mammograms) are not included in inpatient  
17 GAC services markets because insurers and their enrollees cannot substitute outpatient services  
18 for inpatient services in response to a price increase on inpatient GAC services. Additionally,  
19 outpatient services often are offered by a different set of providers under different competitive  
20 conditions.

21 50. The relevant service market does not include other services that are neither  
22 substitutes for nor offered under similar competitive conditions as inpatient GAC services. For  
23 example, the relevant service market does not include services related to behavioral health,  
24 psychiatric care, substance abuse, and rehabilitation services.

25 51. The hypothetical monopolist test is another quantitative tool used by courts and  
26 government agencies to assist in determining the relevant markets in antitrust cases. The test asks  
27 whether a hypothetical monopolist of a proposed market likely would impose at least a small but  
28 significant and non-transitory increase in price. In practical terms, this requires an examination



1 of whether a hypothetical monopolist of the proposed market *could profitably* impose a small but  
2 significant and non-transitory increase in price.

3 52. Here, a hypothetical monopolist of inpatient GAC services sold to commercial  
4 insurers and their enrollees could profitably impose a small but significant and non-transitory  
5 increase in price of those services. Inpatient GAC services sold to commercial insurers and their  
6 enrollees therefore satisfies the hypothetical monopolist test.

7 **The Relevant Geographic Market: The I-680 Corridor**

8 53. An appropriate relevant geographic market in which to analyze the effects of the  
9 Proposed Acquisition is no broader than the I-680 corridor in California's Contra Costa and  
10 Alameda Counties. The I-680 corridor is the main area where SRRMC and John Muir's Walnut  
11 Creek and Concord Medical Centers compete.

12 54. The I-680 corridor is bounded by geographical features that make travel out of the  
13 area cumbersome and unpredictable in terms of transit time. The I-680 corridor runs parallel to  
14 the I-680 highway approximately from Pleasanton, California in the south to Pacheco, California  
15 in the north. A body of water, the Carquinez Strait, restricts travel at the north of the I-680  
16 corridor. The I-680 corridor is bounded to the west by the East Bay Hills, which separate the area  
17 from the Oakland and Berkeley population centers. A limited number of congested tunnels,  
18 passes, and circuitous routes are the only options for motorists seeking to cross these hills and  
19 natural areas to travel west from the I-680 corridor into Oakland or Berkeley. Mountains, hills,  
20 and natural areas of the Diablo Range restrict transit from the I-680 corridor to the east and  
21 south.

22 55. Patients who receive inpatient GAC services along the I-680 corridor prefer to  
23 obtain inpatient GAC services close to where they live. Because a significant portion of patients  
24 within this geographic market would not view hospitals outside of the market as practical or  
25 desirable alternatives, commercial insurers view it as difficult, if not impossible, to successfully  
26 market a health plan to enrollees along the I-680 corridor that excludes all hospitals providing  
27 inpatient GAC services within the I-680 corridor.



1           56. Commercial insurers also must meet California regulatory requirements that  
2 mandate a certain level of geographic access for enrollees of their health plans. Insurers could  
3 not meet access requirements for some patients in the I-680 corridor if those insurers did not  
4 include any I-680 corridor hospitals in their health plans.

5           57. Quantitative evidence confirms this commercial reality. A hypothetical  
6 monopolist of inpatient GAC services sold to commercial insurers and their enrollees in the I-  
7 680 corridor could profitably negotiate a small but significant and non-transitory increase in  
8 price. The I-680 corridor market satisfies the hypothetical monopolist test.

9           **The Proposed Acquisition Leads to a Presumptively Unlawful Increase in Concentration**

10           58. The Proposed Acquisition will grow John Muir’s already significant market share  
11 for inpatient GAC services sold to commercial insurers and their enrollees in the I-680 corridor  
12 to greater than 50% and threaten undue concentration, and therefore is presumptively unlawful.

13           59. This presumption is bolstered by the fact that the Proposed Acquisition represents  
14 one more step in an existing trend toward concentration in the market for inpatient GAC services  
15 sold to commercial insurers and their enrollees in the I-680 corridor. John Muir itself has driven  
16 this trend: In 1996, John Muir acquired the formerly independent Mount Diablo Medical Center,  
17 now rebranded as the John Muir Concord Medical Center. After the Proposed Acquisition, John  
18 Muir will control three formerly independent hospitals that provide inpatient GAC services in the  
19 I-680 corridor.

20           60. Further, market shares for the remaining I-680 corridor hospitals may understate  
21 the anticompetitive effect of the Proposed Acquisition. In particular, a vertically integrated  
22 healthcare company, Kaiser Permanente (“Kaiser”), operates a hospital in Walnut Creek that  
23 provides inpatient GAC services in the I-680 corridor. Kaiser generally does not make its  
24 hospitals or physicians available to enrollees of other commercial insurers’ health plans. Rather,  
25 Kaiser enrolls individuals in its own health plans, and provides inpatient GAC services to those  
26 enrollees almost exclusively at Kaiser’s own facilities.

27           61. Switching between Kaiser and non-Kaiser health plans is a significant  
28 undertaking for an individual. The individual must not only enroll in a new health plan, but also

1 must switch to new healthcare providers, such as primary care physicians and specialists, which  
2 increases barriers to switching for the individual. In contrast, an individual switching among  
3 non-Kaiser health plans may be able to retain their healthcare providers under their new  
4 insurance.

5 62. Some individuals prefer health care obtained through Kaiser’s integrated model,  
6 while others prefer the flexibility of choosing among hospitals and healthcare providers available  
7 through health plans offered by non-integrated commercial health insurance companies.

8 63. Because switching between Kaiser and non-Kaiser health plans is burdensome  
9 and involves significant non-price individual preference, and Kaiser does not compete directly  
10 with other hospitals in the I-680 corridor for contracts with commercial insurers, Kaiser’s I-680  
11 corridor hospital would serve as only an attenuated constraint on John Muir’s ability to increase  
12 prices after the Proposed Acquisition. Kaiser’s share of patient discharges for inpatient GAC  
13 services in the I-680 corridor thus overstates Kaiser’s significance when evaluating the  
14 competitive effects of the Proposed Acquisition.

15 64. Courts, federal and state agencies, and economists commonly employ a metric  
16 known as the Herfindahl-Hirschman Index (“HHI”) to assess market concentration. An  
17 acquisition is presumptively unlawful if it leads to (i) a post-acquisition HHI above 2,500 points  
18 and (ii) an HHI increase of more than 200 points.

19 65. In the market for inpatient GAC services sold to commercial insurers and their  
20 enrollees in the I-680 corridor, the Proposed Acquisition will result in a HHI above [REDACTED] points,  
21 with an increase greater than [REDACTED] points, leading to a presumption of illegality—even when  
22 Kaiser is accorded the full weight of its share of patient discharges. Were Kaiser excluded from  
23 the relevant market, the Proposed Acquisition would lead to a still greater degree of  
24 concentration.

25 66. High barriers to entry and the lack of recent meaningful entry into the relevant  
26 market further bolster the presumption of illegality of the Proposed Acquisition.

**LACK OF COUNTERVAILING FACTORS**

67. New entry of providers of inpatient GAC services in the I-680 corridor will not be timely, likely, or sufficient to offset the anticompetitive effects of the Proposed Acquisition.

68. John Muir itself has estimated that to build a new hospital offering inpatient GAC services [REDACTED]

69. Construction of a new hospital includes high costs and significant financial risk, including the time and resources it would take to conduct studies, develop plans, acquire land or repurpose a facility, garner community support, obtain regulatory approvals, and build and open the facility.

70. Expansion of existing hospitals and repositioning by non-hospital providers to become hospitals in the I-680 corridor would encounter similarly high barriers, including substantial expense and time associated with planning, receiving regulatory approvals, and construction.

71. Defendants cannot demonstrate merger-specific, verifiable, and cognizable efficiencies sufficient to rebut the presumption and evidence of the Proposed Acquisition's likely anticompetitive effects.

**LIKELIHOOD OF SUCCESS ON THE MERITS,**

**BALANCE OF EQUITIES, AND NEED FOR RELIEF**

72. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Commission, whenever it has reason to believe that a proposed merger is unlawful, to seek preliminary injunctive relief to prevent consummation of a merger until the Commission has had an opportunity to adjudicate the merger's legality in an administrative proceeding. In deciding whether to grant relief, the Court must balance the likelihood of the Commission's ultimate success on the merits against the equities. The predominant equity in cases brought under Section 13(b) is the public's interest in effective enforcement of the antitrust laws. Private equities affecting only Defendants' interests are afforded little to no weight and cannot tip the scale against a preliminary injunction.

1           73.     The FTC is likely to succeed in proving that the effect of the Proposed  
2 Acquisition may be substantially to lessen competition or tend to create a monopoly in violation  
3 of Section 7 of the Clayton Act or Section 5 of the FTC Act, and that the Purchase Agreement  
4 and Proposed Acquisition constitute unfair methods of competition in violation of Section 5 of  
5 the FTC Act.

6           74.     Preliminary relief is warranted and necessary. Should the Commission rule, after  
7 the full administrative proceeding, that the Proposed Acquisition is unlawful, reestablishing the  
8 status quo would be difficult, if not impossible, if the Proposed Acquisition has already occurred  
9 in the absence of preliminary relief. Allowing the Proposed Acquisition to close before the  
10 completion of the administrative proceeding would cause irreparable harm by, among other  
11 things, enabling John Muir to begin altering SRRMC's operations and business plans,  
12 eliminating key SRRMC personnel, and altering SRRMC's contracts with insurers, physicians,  
13 and vendors. In the absence of relief from this Court, substantial harm to competition would  
14 occur in the interim, even if suitable divestiture remedies were obtained later.

15           75.     Accordingly, the equitable relief requested here is in the public interest. Plaintiffs  
16 respectfully request that the Court:

- 17           1. Enter the parties' stipulated temporary restraining order;
- 18           2. Preliminarily enjoin Defendants from taking any further steps to consummate  
19           the Proposed Acquisition, or any other acquisition of stock, assets, or other  
20           interests of one another or SRRMC, either directly or indirectly;
- 21           3. Retain jurisdiction and maintain the *status quo* until the administrative  
22           proceeding initiated by the Commission is concluded; and
- 23           4. Award such other and further relief as the Court may determine is appropriate,  
24           just, and proper.

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Dated: November 17, 2023

Respectfully submitted,

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**FILER'S ATTESTATION**

I, Nicolas Stebinger, am the ECF User whose ID and password are being used to file this Complaint for a Temporary Restraining Order and Preliminary Injunction Pursuant to Section 13(b) of the Federal Trade Commission Act. In compliance with Civil Local Rule 5-1(i), I hereby attest that concurrence in the filing of this document has been obtained from each of the other signatories.

By: /s/ Nicolas Stebinger  
Nicolas Stebinger