

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FEDERAL TRADE COMMISSION
Washington, D.C. 20580

Plaintiff,

v.

COLUMBIA/HCA HEALTHCARE CORPORATION,
One Park Plaza Nashville,
Tennessee 37203

Defendant.

CASE NUMBER 1:98CV01889

MOTION FOR ENTRY OF JUDGMENT

Plaintiff, the Federal Trade Commission, having filed its Complaint in the above-captioned case, and having filed this date a Stipulation and proposed Final Judgment, hereby moves this Court for entry of the Final Judgment. By agreement of the parties, the Final Judgment against Columbia/HCA Healthcare Corp. authorized by Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), provides for the payment of two and one half million dollars (\$2,500,000.00). The parties have agreed that the Final Judgment may be entered on the motion of either party.

STATEMENT OF POINTS AND AUTHORITIES

The Complaint in this action alleges that defendant Columbia/HCA engaged in a number of violations of two final orders entered by the Federal Trade Commission: In the Matter of Columbia/HCA Healthcare Corporation, FTC Docket No. C-3619, and In the Matter of Healthtrust, Inc. - The Hospital Company, FTC Docket No. C-3538, as well as an Agreement to Hold Separate, related to the matter in Docket No. C-3619. Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), authorizes the imposition of civil penalties of not more than \$11,000 per violation, and appropriate equitable relief, for violations of Federal Trade Commission orders.⁽¹⁾ In the case of a continuing violation, each day is considered a separate violation. Accordingly, the Complaint seeks "an appropriate civil penalty." As the Stipulation and proposed Final Judgment indicate, defendant has agreed to pay a civil penalty of two and one half million dollars (\$2,500,000.00), payable within thirty (30) days after entry of the Final Judgment.

The Commission submits that the proposed settlement in this action is in the public interest in that it is fair, adequate and reasonable based on consideration of the factors discussed below.⁽²⁾ These factors include, among others: the need to deter similar conduct by this defendant and others; the need to remedy the harm to the public; and the need to vindicate the authority of the Commission and the rule of law.⁽³⁾

The defendant's payment of the \$2.5 million civil penalty set by the Final Judgment is in the public interest because it likely will have the desired deterrent effect, by signaling to the defendant, other industry participants and other respondents subject to Commission orders, that Commission orders cannot be violated without significant consequences. The requirement that the respondent divest the assets required to be divested by a certain deadline, one provision of the Commission's order in Docket No. C-3619 that defendant violated, is a standard requirement in the Commission's divestiture orders and is central to the Commission's ability to remedy unlawful mergers. Similarly, the Commission frequently enters into Agreements to Hold Separate as part of its settlement of alleged violations of the Clayton Act and FTC Act, and the civil penalty here will underscore to like situated respondents that they must perform their obligations under such agreements. Finally, the penalty payment will alert all respondents that they must meet the conditions set for approval of transactions that are subject to FTC approval, and that failure to meet those conditions will constitute violations of the agency's orders. This settlement will further demonstrate the Commission's commitment to assuring the compliance by respondents with the terms of the Commission's orders and will vindicate the authority of the Commission and the rule of law. By achieving these purposes of this enforcement action, the

Final Judgment is in the public interest. For the above reasons, the Federal Trade Commission moves the Court to enter the Final Judgment in this case.

Respectfully submitted,

Daniel P. Ducore

D.C. Bar No.933721
Assistant Director

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Dated: , 1998

Endnotes

(1)The penalty amount was increased to a maximum civil penalty of \$11,000 per violation for violations occurring on or after November 20, 1996, pursuant to the Debt Collection Act of 1996, Pub.L. 104-134 § 31001(s)(amending the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461), and FTC Rule 1.98, 16 C.F.R. § 1.98, 61 Fed. Reg. 54549 (Oct. 21, 1996). Although defendant Columbia/HCA's violations began prior to the date the penalty amount was increased, they continued beyond that date.

(2)See Securities And Exchange Commission v. James H. Randolph, Jr., et al., 736 F.2d 525, 529 (9th Cir. 1984) ("[u]nless a consent decree is unfair, inadequate, or unreasonable, it ought to be approved.").

(3)See United States v. Papercraft Corp., 540 F.2d 131,141 (3rd Cir. 1976); United States v. J.B. Williams Co., 498 F.2d 414 (2nd Cir. 1975); United States v. Louisiana-Pacific Corp., 1990-2 Trade Cas. (CCH) ¶ 69,166 at 64,393 (D.Or. 1990), aff'd 967 F.2d 1372 (9th Cir. 1992).