IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
and	)	
	)	Case No.: 2:26-cv-207-ALM-SCS
STATE OF OHIO,	)	
	)	Judge Algenon L. Marbley
Plaintiffs,	)	
	)	Magistrate Judge S. Courter Shimeall
v.	)	
	)	
OHIOHEALTH CORPORATION,	)	
	)	
Defendant.	)	

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT OHIOHEALTH'S MOTION TO DISMISS UNDER FED. R. CIV. P. 12(b)(6)

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COMBINED TABLE OF CONTENTS AND SUMMARY OF PRINCIPAL ARGUMENTS WITH PRIMARY AUTHORITIES REQUIRED BY LOCAL CIVIL RULE 7.2(a)(3)

I. INTRODUCTION

The United States and the State of Ohio brought this antitrust action to stop Defendant OhioHealth Corporation ("OhioHealth") from imposing anticompetitive contract restrictions on health insurers, which effectively deprive Columbus-area consumers of the choice of lower-cost health plan options. As the Complaint alleges, OhioHealth's contracts with health insurers (also called payors) contain provisions that (1) require health insurers to include OhioHealth in all networks for all commercial insurance products at the most favored level of benefits in each network, and (2) limit health insurers from providing information to their members about more cost-effective options. These provisions effectively prevent health insurers from offering consumers and employers the opportunity to pay less for healthcare from less expensive hospitals and providers. The restrictions that OhioHealth demands from health insurers inhibit competition among hospitals. Because the restrictions deter OhioHealth's competitors from competing by reducing prices, they protect OhioHealth from pressure to reduce its own prices. In turn, this inhibited price competition raises the cost of health insurance and results in patients paying more for essential healthcare. OhioHealth's motion echoes arguments rejected by other federal courts in similar cases.[1] Plaintiffs' allegations more than plausibly state claims under Section 1 of the Sherman Act, 15 U.S.C. § 1, and Ohio's Valentine Act, Ohio Revised Code §§ 1331.01 *et seq.* OhioHealth's motion should be denied.

[1] *See United States v. Charlotte-Mecklenburg Hosp. Auth.*, 248 F. Supp. 3d 720 (W.D.N.C. 2017) (holding that plaintiffs plausibly alleged "direct and indirect evidence of an adverse effect on competition caused by Defendant's steering restrictions that it imposes on insurance companies") ("*Atrium*"); *In re Mission Health Antitrust Litig.*, No. 1:22-cv-00114, 2024 WL 759308 at *8 (W.D.N.C. Feb. 21, 2024) (denying motion to dismiss Sherman Act claims challenging hospital's anticompetitive contracting practices) ("*HCA*"); *see also Sidibe v. Sutter Health*, 667 F. App'x 641 (9th Cir. 2016) (reversing district court's dismissal of plaintiff's Sherman Act claims) ("*Sutter*").

II. PLAINTIFFS' ALLEGATIONS

A. OhioHealth Has Market Power in the Sale of Inpatient General Acute Care Hospital Services to Health Insurers in the Columbus Area.

OhioHealth is the dominant hospital system in Columbus, Ohio. Complaint at ¶ 3, ECF No. 1 at PageID 2. It owns or manages sixteen hospitals in Ohio, as well as outpatient facilities, physician groups, and other healthcare services. Complaint at ¶¶ 7-8, ECF No. 1 at PageID 3.

OhioHealth offers a range of inpatient general acute care (or "GAC") hospital services (also referred to as "hospital services" in this brief) to commercial health insurers and their members. Health insurers negotiate contracts with GAC hospitals to allow their members to receive care for a broad range of medical and surgical diagnostic and treatment services that include a patient's overnight stay in the hospital (such as obstetric or cardiac services). Complaint at ¶ 39, ECF No. 1 at PageID 12. Patients do not choose between hospital services and other kinds of healthcare services (such as rehabilitation services or outpatient services) because they are not substitutes for one another. Complaint at ¶¶ 40-41, ECF No. 1 at PageID 12.

Two geographic regions in the Columbus area—Central Columbus, which is comprised of Franklin and Delaware Counties, and the broader Columbus Metropolitan Statistical Area ("MSA")[2]—are described in the Complaint as relevant geographic markets for purposes of assessing Plaintiffs' allegations. Complaint at ¶¶ 42-47, ECF No. 1 at PageID 13-17. *First*, OhioHealth's own documents identify Franklin and Delaware counties as a distinct region—which OhioHealth calls Central Columbus—for providing healthcare services. Complaint at

[2] The U.S. Office of Management and Budget defines the "Columbus Metropolitan Statistical Area" or "Columbus MSA" as the counties of Delaware, Fairfield, Franklin, Hocking, Licking, Madison, Morrow, Perry, Pickaway, and Union. Complaint at ¶ 46, ECF No. 1 at PageID 16. *See also* https://www.census.gov/programs-surveys/metro-micro/about/glossary.html (An MSA is "[a] geographic entity delineated by the Office of Management and Budget for use by federal statistical agencies. Metropolitan statistical areas consist of the county or counties (or equivalent entities) associated with at least one urban area of at least 50,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties.").

¶ 43, ECF No. 1 at PageID 13-14. Because patients prefer to receive hospital services near their homes, a health insurer without any in-network hospitals located in Central Columbus would not be competitive selling commercial health plans in Central Columbus. Complaint at ¶ 45, ECF No. 1 at PageID 15. The Complaint alleges that if a single firm—a hypothetical monopolist—owned all the hospitals in Central Columbus, it would be able to raise prices because patients prefer to seek hospital services near their homes. Complaint at ¶ 45, ECF No. 1 at PageID 15-16. *Second*, OhioHealth can also exercise market power in the Columbus MSA. Complaint at ¶ 46, ECF No. 1 at PageID 16. As with the Central Columbus market, the Complaint alleges that if a single firm—the hypothetical monopolist—owned all the hospitals in the Columbus MSA, it would be able to raise prices because patients prefer to seek hospital services near their homes. Complaint at ¶ 47, ECF No. 1 at PageID 17.

OhioHealth has market power in hospital services in both relevant geographic markets. Complaint at ¶¶ 48-56, ECF No. 1 at PageID 17-20. In 2023, OhioHealth had more than 35% of the inpatient GAC discharges in both the Central Columbus and Columbus MSA geographic markets and controlled more than 35% of the inpatient GAC beds in both markets. Complaint at ¶ 49, ECF No. 1 at PageID 17. OhioHealth's own internal document from 2023 acknowledges both its "strong market position" and "strong profitability." *Id.*

OhioHealth's market power is built upon the scale, breadth, and configuration of its providers, including, among other things, its large size, its many locations, and its control of rural hospitals that insurers need to include in at least some of their networks to maintain network coverage. Complaint at ¶ 11, ECF No. 1 at PageID 4. OhioHealth requires a health insurer that wants any of OhioHealth's hospitals in its network to include all of OhioHealth's hospitals in its network. *Id.* Because of OhioHealth's size and the many hospitals it controls, both inside and

near the Columbus MSA, a health insurer selling health insurance plans to individuals and employers in the Columbus MSA and in Central Columbus must have OhioHealth as a participant in at least some of its provider networks to have viable health insurance products. Complaint at ¶ 50, ECF No. 1 at PageID 18.

OhioHealth's primary competitors include The Ohio State University Wexner Medical Center ("Ohio State") and Mount Carmel Health System ("Mount Carmel"), which is owned by Trinity Health. Complaint at ¶ 8, ECF No. 1 at PageID 3. OhioHealth has used its market power in the Central Columbus and Columbus MSA areas to charge health insurers prices, in the form of "reimbursement rates," that are higher than local competitors' even though the services OhioHealth offers are generally not of higher quality. Complaint at ¶¶ 9-10, ECF No. 1 at PageID 4.

B. OhioHealth Uses its Market Power to Impede the Development of Budget-Conscious Health Insurance Plans That Would Lower Costs and Benefit Consumers.

Health insurers individually negotiate reimbursement rates and contract terms with OhioHealth that allow their members to access OhioHealth's hospital services. Complaint at ¶ 17, ECF No. 1 at PageID 6. OhioHealth jointly negotiates inpatient hospital services with all other services it offers in contracts with health insurers. Complaint at ¶ 41, ECF No. 1 at PageID 13. In addition to demanding reimbursement rates that are higher than the competition and above competitive levels, OhioHealth uses its market power to secure other contractual terms that restrict the development of budget-conscious insurance plans. Complaint at ¶¶ 9, 49, 31, and 54, ECF No. 1 at PageID 4, 17, 10, and 19. The same health insurers that serve the Columbus area offer budget-conscious plans in other places they do business, such as other parts of Ohio and the United States, and would offer such plans in the Columbus area if OhioHealth's contracts did not restrict them from doing so. Complaint at ¶ 37, ECF No. 1 at PageID 11.

Health insurers design budget-conscious plans to give patients and employers the opportunity to choose among differently priced options for their healthcare. Complaint at ¶¶ 19-20, ECF No. 1 at PageID 6-7. For health insurers, a key factor in developing plans is establishing a network of hospitals and providers and setting the costs for members for the healthcare services they receive from in-network providers. Complaint at ¶ 17, ECF No. 1 at PageID 6. Health insurers in markets with robust provider competition generally offer a spectrum of plans: from broad network plans that allow consumers to access virtually all providers in their area for a cost premium, to lower-cost plans that either have a more limited panel of lower-cost providers, or offer patients lower out-of-pocket costs when they select care at less-expensive providers. Complaint at ¶ 18, ECF No. 1 at PageID 6; Complaint at ¶ 20, ECF No. 1 at PageID 7. These budget-conscious plans can take a variety of forms, including narrow network plans, tiered network plans, and plans with features including centers of excellence, site of service steering, reference-based pricing, and active transparency. Complaint at ¶¶ 21-27, ECF No. 1 at PageID 7-9. Health insurers in competitive markets generally offer these budget-conscious plans because some budget-conscious employers and patients choose them to save money. Complaint at ¶¶ 18, 20, and 28, ECF No. 1 at PageID 6, 7, and 9.

OhioHealth imposes provisions in its contracts that restrict health insurers from offering budget-conscious plans that allow patients to save money by seeking care at OhioHealth's lower-cost rivals. Complaint at ¶ 1, ECF No. 1 at PageID 1-2. These contractual restrictions, which have been in place since at least 2003, allow OhioHealth to insulate itself from price competition and charge reimbursement rates that are significantly higher than its competitors without losing patient volume. Complaint at ¶¶ 2-3, ECF No. 1 at PageID 2; Complaint at ¶ 9, ECF No. 1 at PageID 4.

Except for a limited set of OhioHealth's services for which the restrictions do not apply, OhioHealth restricts health insurers from offering commercial plans that do not place OhioHealth in the most favored level of benefits ("tier") of each network or that do not include OhioHealth. Complaint at ¶ 32, ECF No. 1 at PageID 10. These restrictions effectively prevent the health insurers that together account for 85% of commercial health insurance business in the Columbus area from introducing and implementing budget-conscious plans. Complaint at ¶ 33, ECF No. 1 at PageID 10-11.

OhioHealth's contractual restrictions also prevent health insurers from providing information on prices and costs to patients. Complaint at ¶ 34, ECF No. 1 at PageID 11. These anticompetitive provisions hinder patients and consumers in the Columbus area from being fully informed about the cost of their healthcare, deterring OhioHealth's competitors from competing for patients on price and quality. Complaint at ¶¶ 35-36, ECF No. 1 at PageID 11.

Health insurers in the Columbus area have tried to negotiate the removal of these anticompetitive contractual provisions from their OhioHealth contracts. Complaint at ¶ 51, ECF No. 1 at PageID 18. But OhioHealth has refused, and thus prevented health insurers from introducing budget-conscious plans. *Id.* Because health insurers need to include OhioHealth in at least some of their provider networks to be viable in the relevant geographic markets, health insurers must accept these restrictions. Complaint at ¶¶ 50-51, ECF No. 1 at PageID 18. As a result, OhioHealth has impeded its rivals from competing for more commercial insurance business because it has removed their incentives to provide lower prices or more value. *Id.*

OhioHealth's contractual restrictions lead to fewer health insurance plan options for patients and consumers, reduced competition between hospitals and providers, and higher costs for patients and consumers. Complaint at ¶ 6, ECF No. 1 at PageID 3; Complaint at ¶ 30, ECF

No. 1 at PageID 10. OhioHealth's restrictions also distort the competitive process by deterring rival hospitals from expanding and improving over time. Complaint at ¶¶ 51-52, ECF No. 1 at PageID 18-19.

III. LEGAL STANDARD

A motion to dismiss for failure to state a claim upon which relief can be granted "is a test of the plaintiff's cause of action as stated in the complaint, not a challenge to the plaintiff's factual allegations." *Golden v. City of Columbus*, 404 F.3d 950, 958-59 (6th Cir. 2005). In ruling on a motion to dismiss, a court must take all factual allegations in the complaint as true, *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and must construe the complaint in the light most favorable to the plaintiff, *Mattera v. Baffert*, 100 F.4th 734, 739 (6th Cir. 2024). If multiple reasonable inferences may be drawn from an allegation, the allegation must be construed in favor of the plaintiff. *Mayer v. Mylod*, 988 F.2d 635, 638 (6th Cir. 1993).

Federal Rule of Civil Procedure 8(a)(2) requires that a complaint contain only a "short and plain statement of the claim showing that the pleader is entitled to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Antitrust claims do not require any additional specificity beyond what is required by Rule 8(a)(2). *See id.* at 554-56 (applying Rule 8(a)(2) standard to a motion to dismiss a claim brought under Section 1 of the Sherman Act); *see also City of Pontiac Police & Fire Ret. System v. BNP Paribas Securities Corp.*, 92 F.4th 381, 391 (2d Cir. 2016) ("there is no 'heightened pleading standard'" in antitrust cases) (quoting *Concord Assocs. L.P. v. Ent. Props. Tr.*, 817 F.3d 46, 52 (2d Cir. 2016)). In *Twombly*, the Supreme Court held that an antitrust claim does "not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." *Twombly*, 550 U.S. at 570. Claims are plausible if they contain "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. The "pleading

standard Rule 8 announces does not require 'detailed factual allegations[,]'" *Iqbal*, 556 U.S. at 678, but factual allegations "must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

A "complaint should be read as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 594 (8th Cir. 2009). In ruling on a motion to dismiss, a court "may not consider matters beyond the complaint." *Winget v. JP Morgan Chase Bank, N.A.*, 537 F.3d 565, 576 (6th Cir. 2008) (explaining that if a court considers evidence outside of the complaint, the motion to dismiss is effectively converted to a motion for summary judgment and the parties must be given the opportunity to present all pertinent material to a summary judgement motion).

IV. THE COMPLAINT PLAUSIBLY STATES THE ELEMENTS OF PLAINTIFFS' SHERMAN ACT CLAIM.

The Complaint plausibly alleges that OhioHealth has entered into agreements that unreasonably restrain trade in the relevant markets. For each element of a claim under Section 1 of the Sherman Act, the Complaint sets forth factual allegations demonstrating Plaintiffs' right to relief. In support of its motion, OhioHealth misconstrues the factual allegations and otherwise rehashes arguments that multiple courts have rejected when considering closely analogous circumstances and allegations, and which fare no better here. *See Atrium*, 248 F. Supp. 3d at 733; *HCA*, 2024 WL 759308 at *8-10; *see also Sutter*, 667 F. App'x at 642-43. OhioHealth also raises factual disputes that are premature at this stage of the litigation, and makes incorrect legal assertions, often based on irrelevant aspects of antitrust law.

A. Elements of a Claim Under Section 1 of the Sherman Act

To state a claim under Section 1, a plaintiff must allege (1) "a contract, combination or conspiracy" (2) "affecting interstate commerce" (3) "which imposes an unreasonable restraint on

trade." *White & White, Inc. v. Am. Hosp. Supply Corp.*, 723 F.2d 495, 504 (6th Cir. 1983). As to the third element, restraints on trade "can be unreasonable in one of two ways." *Ohio v. Am. Express Co.*, 585 U.S. 529, 540 (2018) ("*Amex*"). Some restraints—such as horizontal agreements to fix prices—are *per se* unreasonable based on their inherently anticompetitive "nature and character." *Standard Oil Co. of N.J. v. United States*, 221 U.S. 1, 64-65 (1911); *see also NCAA v. Alston*, 594 U.S. 69, 89 (2021). Restraints that are not *per se* unreasonable—such as those at issue in this case—are subject to the "rule of reason," a "fact-specific assessment" of the restraint's effect on competition. *Amex*, 585 U.S. at 541.[3]

Under the rule of reason, plaintiffs have the initial burden to prove that "the challenged restraint has a substantial anticompetitive effect that harms consumers in the relevant market." *Id.* at 541.[4] Plaintiffs can make this showing directly or indirectly. Direct evidence includes "proof of actual detrimental effects" on competition, such as "reduced output, increased prices, or decreased quality in the relevant market." *Id.* at 542; *see*, *e.g.*, *Pavia v. NCAA*, 760 F. Supp. 3d 527, 538-41 (M.D. Tenn. 2024) (finding direct evidence of anticompetitive effects). The direct approach also includes evidence that the defendant's conduct has "disrupt[ed] the proper functioning of the price-setting mechanism of the market." *FTC v. Ind. Fed'n of Dentists*, 476 U.S. 447, 461-62 (1986). Indirect evidence of anticompetitive effects provides an alternative to

[3] In some cases, courts have applied a "quick look" approach—"an abbreviated form of the rule of reason analysis used for situations in which 'an observer with even a rudimentary understanding of economics could conclude that the arrangements in question would have an anticompetitive effect on customers and markets.'" *In re Se. Milk Antitrust Litig.*, 739 F.3d 262, 274 (6th Cir. 2014) (quoting *Cal. Dental Ass'n v. FTC*, 526 U.S. 756, 770 (1999)). Plaintiffs reserve the right to argue that this approach should apply to some or all of OhioHealth's contractual restrictions for purposes of summary judgment or trial.

[4] Defendant incorrectly recites the legal standard for elements of a Section 1 claim under the rule of reason. Motion to Dismiss, ECF No. 18 at PageID 117-18. *Amex* is controlling Supreme Court case law interpreting Section 1 (and by extension interpreting the Valentine Act). Defendant's cases purporting to recite elements of a Section 1 claim include *Care Heating & Cooling, Inc. v. Am. Standard, Inc.*, 427 F.3d 1008, 1014 (6th Cir. 2005), and *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross and Blue Shield,* 552 F.3d 430, 432 (6th Cir. 2008). These decisions were rendered before *Amex* and therefore are not controlling precedent to the extent they differ or are inconsistent with *Amex*. Plaintiffs' recitation of Section 1 elements is drawn from *Amex*.

proving "actual detrimental effects." *Amex*, 585 U.S. at 542. Under the indirect approach, plaintiffs may instead meet their burden by showing that the defendant possesses market power "plus 'some other ground for believing that the challenged behavior could harm competition in the market, such as the inherent anticompetitive nature of the defendant's behavior or the structure of the interbrand market.'" *Atrium*, 248 F. Supp. 3d at 728 (quoting *Tops Markets, Inc. v. Quality Markets, Inc.*, 142 F.3d 90, 97 (2d Cir. 1998)); *accord Amex*, 585 U.S. at 542 (indirect approach requires "proof of market power plus some evidence that the challenged restraint harms competition"); *Realcomp II, Ltd. v. FTC*, 635 F.3d 815, 829-31, 834 (6th Cir. 2011) (affirming finding of unreasonableness "even if the evidence of actual effects is inconclusive" based on the defendant's market power and the "anticompetitive tendencies" of the challenged conduct). Plaintiffs' Complaint includes plausible allegations that, if proven, would establish liability both directly and indirectly.

B. The Complaint Pleads the Elements of a Section 1 Claim.

The Complaint alleges facts sufficient to satisfy each element of a Section 1 claim: (1) "a contract, combination or conspiracy" (2) "affecting interstate commerce" (3) "which imposes an unreasonable restraint on trade." *Am. Hosp. Supply Corp.*, 723 F.2d at 504 (internal quotation marks omitted). Accordingly, the motion should be denied.[5]

1. The Complaint Sufficiently Alleges OhioHealth's Anticompetitive Contracts.

The Complaint's allegations regarding the existence of OhioHealth's contracts with health insurers, as well as the allegedly unlawful contract provisions contained within them, are

[5] OhioHealth does not challenge the sufficiency of the Complaint's allegations regarding interstate commerce. *See, e.g.*, Complaint at ¶¶ 16, 38, ECF No. 1 at PageID 5-6, 12 (alleging that OhioHealth engages in interstate commerce when providing healthcare services and that "the contractual restrictions imposed by OhioHealth affect [these services]"). Therefore, Plaintiffs focus on the first and third elements of a Section 1 claim.

more than sufficient to state a claim under *Twombly*.

Courts have found a wide variety of agreements sufficient to satisfy Section 1's requirement for a "a contract, combination or conspiracy." *See, e.g.*, *Systemcare, Inc. v. Wang Labs. Corp.*, 117 F.3d 1137, 1143 (10th Cir. 1997) (holding that an agreement between a buyer and seller is sufficient even where "the buyer would have preferred a contract without the [anticompetitive] term"); *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946, 982 (9th Cir. 2023) (holding even "a non-negotiated contract of adhesion" to be sufficient).

OhioHealth's negotiated agreements with health insurers satisfy this requirement. As detailed in Section II.B., *supra,* the provisions of these agreements "restrict[] health insurers from offering budget-conscious plan designs" by "effectively forcing them to include OhioHealth in all networks for all commercial insurance products" and "requiring that OhioHealth be featured at the most favored level of benefits in each network." Complaint at ¶ 32, ECF No. 1 at PageID 10. "OhioHealth's contractual provisions with payors also severely limit payors' efforts to increase transparency about the price of healthcare services in the Columbus area," including by "prevent[ing] payors from even providing patients with truthful information about the prices of healthcare services they may receive." Complaint at ¶ 34, ECF No. 1 at PageID 11.

The Complaint pleads adequate detail about the contract provisions at issue to satisfy Rule 8 and *Twombly*, and to support a plausible Section 1 claim. *See HCA*, 2024 WL 759308, at *9 (denying motion to dismiss and reasoning that, at the pleading stage, "it [was] of no consequence that Plaintiffs ha[d] not cited with particularity to such provisions.").[6] OhioHealth

[6] OhioHealth cites the Sixth Circuit's opinion in *Total Benefits Planning Agency, Inc. v. Anthem Blue Cross & Blue Shield* for the proposition that Plaintiffs must plead more detail about the contracts. 552 F.3d 430, 432 (6th Cir. 2008). But in *Total Benefits*, plaintiff alleged no facts suggesting the existence of an anticompetitive agreement; rather, it based its Section 1 claim on an allegation that the defendants were "acting in a similar fashion." *Id.* at 436.

is clearly on notice of the agreements at issue. Indeed, OhioHealth confirms that it understands exactly what agreements are at stake when it refers to them in its brief as "voluntary contracts" that are "negotiat[ed] between sophisticated buyers and sellers" through "collective negotiations on behalf of large groups of consumers" and subject to competition when they "are terminated, re-bid, or expire." Motion to Dismiss, ECF No. 18 at PageID 111-13. To the extent OhioHealth seeks additional factual details regarding particular provisions in specific contracts, those issues are more appropriate for discovery. *See Twombly*, 550 U.S. at 556 ("Asking for plausible grounds to infer an agreement does not impose a probability requirement at the pleading stage; it simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of illegal agreement.").

2. The Complaint Alleges that the Contracts Unreasonably Restrain Trade.

The Complaint plausibly alleges that OhioHealth's contractual restrictions are unreasonable restraints of trade. The Complaint defines the relevant product and geographic markets and alleges both direct and indirect evidence of anticompetitive effects, each of which is sufficient on its own to defeat OhioHealth's motion.

a. The Complaint Properly Alleges the Relevant Product and Geographic Markets.

The Complaint properly alleges the product and geographic markets in which OhioHealth's conduct produces anticompetitive effects. Specifically, Plaintiffs allege that "the sale of inpatient general acute care ('GAC') hospital services to commercial payors and their members is a relevant product market in which to assess the market power that OhioHealth wields and the competitive effects of OhioHealth's contractual restrictions." Complaint at ¶ 38,

That is a far cry from the allegations here of contractual agreements that establish the terms on which health insurers serving the Columbus area purchase healthcare services on behalf of their enrollees.

ECF No. 1 at PageID 12. OhioHealth's contractual restrictions harm competition in two geographic markets: (1) "Central Columbus" (consisting of Franklin and Delaware counties); and (2) the Columbus Metropolitan Statistical Area (the "Columbus MSA"). Complaint at ¶¶ 42-47, ECF No. 1 at PageID 13-17.

"The purpose of defining a geographic market is to reveal whether, or to what extent, market power exists." *In re Se. Milk Antitrust Litig.*, 739 F.3d at 277. The Complaint explains that Central Columbus and the Columbus MSA are both "geographic market[s] in which market power in the sale of inpatient GAC hospital services can be exercised." Complaint at ¶¶ 45, 46, ECF No. 1 at PageID 15, 16. The Complaint alleges that each of these geographic markets satisfies the "hypothetical monopolist test," which the Sixth Circuit has found to be "a useful framework for organizing the factors the courts have applied in geographic market definition" in a Section 1 case. *In re Se. Milk Antitrust Litig.*, 739 F.3d at 282 (internal quotation omitted). Under this test, a candidate market is valid when "a monopolist [could] profit if it imposed a 'small but significant non-transitory increase in price' ('SSNIP')" across the candidate market. *Id.* at 277.[7] The Complaint explains that each of the alleged relevant markets satisfies this test—that is, "[a] hypothetical monopolist consisting of all hospitals in [each of these areas] likely would undertake at least a [SSNIP] or other worsening of terms over a sustained period of time for at least one hospital." Complaint at ¶¶ 45, 47, ECF No. 1 at PageID 15, 17. Because patients "prefer to receive inpatient GAC hospital services at hospitals that are close to their homes," "a payor without any in-network hospitals located in [each relevant market] would not be competitive selling commercial health plans [in that market]." *Id.*

[7] *See also* U.S. Department of Justice & Federal Trade Commission, Merger Guidelines 41-43 (Dec. 18, 2023), https://www.justice.gov/d9/2023-12/2023%20Merger%20Guidelines.pdf.

OhioHealth acknowledges these allegations but nevertheless argues that Plaintiffs "fail[] to sufficiently plead the relevant geographic market" for three reasons. Motion to Dismiss, ECF No. 18 at PageID 120. *First*, OhioHealth argues that "[t]here is an unexplained disconnect between the alleged product and geographic markets in the Complaint." Motion to Dismiss, ECF No. 18 at PageID 121. The motion does not clearly explain this supposed disconnect, and in fact, does not accurately characterize the allegations setting out the relevant product market.[8] OhioHealth appears to take issue with the fact that the relevant product market involves the sale of services to *health insurers*, while the Complaint bases its geographic markets in part on the preferences of *patients* as to where to seek care. Motion to Dismiss, ECF No. 18 at PageID 121. But that is entirely consistent. Health insurers must consider the preferences of patients (who are also their customers) when designing their insurance plans. *See FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 342 (3d Cir. 2016) (explaining that "[p]atients are relevant to the analysis, especially to the extent that their behavior affects the relative bargaining positions of insurers and hospitals").

As the Sixth Circuit has explained, "[o]utlining a geographic market entails mapping an area 'within which the defendant's customers who are affected by the challenged practice can practicably turn to alternative suppliers if the defendant were to raise its prices or restrict its output.'" *In re Se. Milk Antitrust Litig.*, 739 F.3d at 277 (quoting *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 441-42 (4th Cir. 2011)). The Complaint describes two such geographic areas around Columbus. Because patients prefer to seek care at hospitals that are close to their homes, a health insurer that does not include hospitals in a geographic area would

[8] OhioHealth purports to quote the Complaint as defining the relevant product market as the "sale of healthcare services to payors," Motion to Dismiss, ECF No. 18 at PageID 120. But this language does not appear in the Complaint. The Complaint defines the relevant product market as "the sale of inpatient general acute care ('GAC') hospital services to commercial payors and their members." Complaint at ¶ 38, ECF No. 1 at PageID 12.

not be competitive selling insurance plans to patients there. Complaint at ¶¶ 45, 47, ECF No. 1 at PageID 15-17. Rather than introducing an inconsistency, these allegations properly account for the nature of the interaction among patients, health insurers, and hospitals.

Second, OhioHealth's assertion that the alleged geographic markets do not "comport[] with" the Complaint's allegations regarding OhioHealth's market power mistakes the relationship between relevant geographic markets and the forces that give OhioHealth market power in those markets. Motion to Dismiss, ECF No. 18 at PageID 121. Plaintiffs have alleged two relevant geographic markets: Central Columbus and the Columbus MSA. Complaint at ¶¶ 42-47, ECF No. 1 at PageID 13-17. These relevant geographic markets are the areas within which the anticompetitive effects of OhioHealth's restrictions should be assessed. The Complaint alleges a variety of ways in which OhioHealth possesses and exerts market power in these relevant geographic markets. For example, OhioHealth's "size and the many hospitals it controls" within the relevant markets confer market power on OhioHealth because a health insurer "must have OhioHealth as a participant in at least some of its provider networks to have viable health insurance products" in those markets. Complaint at ¶ 50, ECF No. 1 at PageID 18. The Complaint further alleges that OhioHealth "also derives market power from its control of hospitals outside of the Columbus MSA, some of which are the only hospitals in their counties" because health insurers also "need those hospitals in their provider networks." *Id.*

OhioHealth appears to claim that Plaintiffs must define *additional* geographic markets for the areas where these hospitals outside the Columbus MSA are located. But OhioHealth cites no authority for this proposition. Plaintiffs have no obligation to define markets to suit OhioHealth. Rather, Plaintiffs are required only to plead the markets in which they seek to show that OhioHealth has market power. The Complaint alleges facts sufficient to define Central Columbus

and the Columbus MSA as relevant geographic markets. Complaint at ¶¶ 43-45, 47, ECF No. 1 at PageID 13-17. At trial, OhioHealth may seek to dispute Plaintiffs' position that its out-of-market hospitals are a source of market power in the Central Columbus and Columbus MSA markets. But at most, that is a factual issue regarding one factor among many that the Complaint alleges contribute to OhioHealth's market power.

Third, OhioHealth asserts that a relevant geographic market should be defined as "that area in which a potential buyer may rationally look for the goods or services he seeks" and need not "equate to the county or other political boundary lines." Motion to Dismiss, ECF No. 18 at PageID 121. But courts routinely use county lines to define geographic markets for the provision of hospital services, as Plaintiffs have alleged here. *See, e.g.*, *FTC v. Hackensack Meridian Health, Inc*., 30 F.4th 160, 172 (3d Cir. 2022) (holding that "the District Court did not clearly err in finding the FTC demonstrated that Bergen County, including all hospitals that serve its residents, is a relevant geographic market"); *FTC v. Penn State Hershey Med. Ctr.*, 838 F.3d 327, 346 (3d Cir. 2016) (holding the government met its burden in properly defining a relevant geographic market when it alleged a four-county area around Harrisburg, Pennsylvania); *In re ProMedica Health Sys., Inc.*, No. 9346, 2012 WL 2450574, at *41-42 (FTC 2012) (finding Lucas County, Ohio to be a valid geographic market for both "general acute care inpatient hospital services" and "OB inpatient hospital services"), *aff'd*, *ProMedica Health Sys. v. FTC*, 749 F.3d 559 (6th Cir. 2014). To the extent OhioHealth contends that geographic markets alleged in the Complaint are too imprecise because they are delineated by county and MSA lines, this is another factual question for discovery rather than an issue with the sufficiency of the Complaint's allegations. *See Found. for Int. Design Educ. Rsch. v. Savannah Coll.*, 244 F.3d 521, 531 (6th Cir. 2001) ("Market definition is a highly fact-based analysis that generally requires

discovery.").[9]

b. The Complaint Plausibly Alleges Direct Evidence of Anticompetitive Effects.

OhioHealth claims that "[t]he Complaint lacks plausible allegations of harm" and "[a]t best . . . alleges harm to OhioHealth's competitors." Motion to Dismiss, ECF No. 18 at PageID 119, 125 (ellipses added). To the contrary, the Complaint includes detailed allegations regarding how OhioHealth's contractual restrictions harm *overall* competition and not merely OhioHealth's competitors. *See supra* Section II.B. These allegations illustrate how the restrictions insulate OhioHealth from price competition and interfere with the basic principle of an unfettered market in which a seller can win more business by lowering its price. The Complaint, by describing these market distortions, plausibly alleges direct evidence of anticompetitive effects.

OhioHealth's contractual restrictions prevent *consumers* from accessing narrower health plan options that would allow patients and employers to reduce healthcare costs. Complaint at ¶¶ 29-33, ECF No. 1 at PageID 9-11. These restrictions allow OhioHealth to insulate itself *and the entire market* from price competition. This softening of price competition enables OhioHealth to charge reimbursement rates that are significantly higher than those of its competitors. Complaint at ¶¶ 2, 9, 51, ECF No. 1 at PageID 2, 4, 18. OhioHealth's contractual restrictions also prevent OhioHealth's rivals from lowering prices to gain more patient volume. The restrictions further raise barriers to entry by reducing the prospects available to new entrants. Complaint at ¶ 53, ECF No. 1 at PageID 19. And OhioHealth's restrictions on price transparency

[9] Although the merits of this factual dispute are not germane at this stage, OhioHealth's position is also meritless. Courts hold that "[g]eographic markets need not be alleged or proven with 'scientific precision,' nor be defined 'by metes and bounds as a surveyor would lay off a plot of ground.'" *United States v. Blue Cross Blue Shield of Mich.*, 809 F. Supp. 2d 665, 673 (E.D. Mich. 2011) (first quoting *United States v. Conn. Nat'l Bank*, 418 U.S. 656, 669 (1974); then quoting *United States v. Pabst Brewing Co.*, 384 U.S. 546, 549 (1966)); *see also Blue Cross Blue Shield of Mich.*, 809 F. Supp. 2d at 673 ("The complaint need only present sufficient information to plausibly suggest the contours of the relevant geographic market.").

reduce consumers' ability to make informed choices among the limited options that do exist. Complaint at ¶¶ 34, 54, ECF No. 1 at PageID 11, 19.[10]

OhioHealth's characterization of these effects as "harm to competitors" misses the point. By reducing the ability and incentives for OhioHealth, its rivals, and prospective new entrants to compete on price and quality, OhioHealth's contract provisions insulate OhioHealth from competition and thus harm both individual patients and the competitive process itself. Complaint at ¶ 51, ECF No. 1 at PageID 18-19. OhioHealth's restrictions prevent unfettered rivalry by distorting the pricing incentives of OhioHealth and its competitors. Absent these restrictions, OhioHealth's competitors would be able to attract customers by charging lower prices, thereby creating an incentive for OhioHealth to similarly cut prices to win business.[11] With OhioHealth's restrictions in place, such incentives are diminished. Patients and employers who purchase healthcare services in the Columbus area bear the brunt of this interference with a competitive market. As alleged in the Complaint, the reduction in competition caused by these contract restrictions has left patients and employers with higher healthcare costs, lower quality services, and fewer options than they would have in a more competitive market. Complaint at ¶¶ 4-6, 54, ECF No. 1 at PageID 2-3, 19.

[10] OhioHealth observes that the Complaint does not allege a violation of hospital price transparency regulations. Motion to Dismiss, ECF No. 18 at PageID 123. That observation is irrelevant to this antitrust case. Plaintiffs' allegation regarding transparency is that OhioHealth's contractual restrictions function as "gag rules," anticompetitively depriving patients of the information they need to make good decisions. Complaint at ¶ 34, ECF No. 1 at PageID 11; *see Ind. Fed'n of Dentists*, 476 U.S. at 461-62 ("A concerted and effective effort to withhold (or make more costly) information desired by consumers for the purpose of determining whether a particular purchase is cost justified is likely enough to disrupt the proper functioning of the price-setting mechanism of the market that it may be condemned even absent proof that it resulted in higher prices or, as here, the purchase of higher priced service, than would occur in its absence."); *cf. Epic Games*, 67 F.4th at 999, 1001 (affirming district court ruling that Apple's anti-steering provisions violated California's Unfair Competition Law where the provisions "decreased information, enabling supracompetitive profits and resulting in decreased innovation." (cleaned up)).

[11] The restrictions prevent the development of budget conscious plans, which likely would feature OhioHealth's competitors, and in turn inhibits the competitors' ability to attract patients, make quality-improving investments, build their reputations, and earn patients' loyalty. Complaint at ¶¶ 2, 52, ECF No. 1 at PageID 2, 19.

The Complaint alleges that "the restrictions enable OhioHealth to continue to charge supracompetitive prices"—prices above the level that would exist in competitive conditions—"without the consequence of losing patient volume." Complaint at ¶ 31, ECF No. 1 at PageID 10; *see also id.* ¶ 49, ECF No. 1 at PageID 17-18 ("Market power confers the ability to raise prices above those that could be charged in a competitive market, and OhioHealth's supracompetitive rates provide compelling evidence of its possession and exercise of market power."). OhioHealth's claim that the Complaint fails to assert that price is "above a competitive level[,]" Motion to Dismiss, ECF No. 18, at PageID 123, is therefore inaccurate. OhioHealth also claims that "any price differences" are "inseparable from recognition of OhioHealth's high quality in the market." Motion to Dismiss, ECF No. 18 at PageID 124. But the Complaint explicitly alleges that "OhioHealth's services are not generally higher quality than those of its local rivals." Complaint at ¶ 10, ECF No. 1 at PageID 4. OhioHealth disputes this factual allegation, but that is not grounds for granting a motion to dismiss.[12]

Seizing on the fact that healthcare industry insiders refer to contract restrictions like OhioHealth's as "anti-steering" provisions, OhioHealth makes much of the Supreme Court's statement in *Amex*, a case involving credit card networks, that "there is nothing *inherently* anticompetitive about Amex's antisteering provisions" that discouraged American Express cardholders from using rival payment cards. Motion to Dismiss, ECF No. 18 at PageID 103, 125-

[12] Although the Court need not consider it at this stage of the litigation, before the parties have engaged in any discovery, OhioHealth's own proffered evidence about its quality appears dubious. OhioHealth claims that "OhioHealth's Riverside Methodist Hospital is the only overall five-star rated hospital in Columbus, Ohio," citing a USA Today website based on an unspecified version of data from the Centers for Medicare & Medicaid Services ("CMS"). Motion to Dismiss, ECF No. 18 at PageID 101. However, the primary source data from CMS indicates that Riverside's rating has been four stars (not five stars) since August 2025. *See* CMS, Hospital Archived Data Snapshots tbl. "Hospital General Information," https://data.cms.gov/provider-data/archived-data/hospitals (contained within each snapshot zip file). This inconsistency, as well as the questions raised in the motion about the accuracy of Leapfrog quality data, underscore the need for discovery regarding the factual issues in this case.

126 (citing *Amex*, 585 U.S. at 551) (emphasis added). But the *Amex* Court did not make a finding as to the effects of "steering" restrictions generally, nor, of course, as to the effects of the contractual restrictions at issue *here*. Rather, it applied the rule of reason to determine the effects of the specific contractual provisions at issue in that case. *Amex*, 585 U.S. at 541.

And OhioHealth ignores the *Atrium* decision, where the district court found allegations of harm that were nearly identical to those at issue here sufficient to state a Section 1 claim. The complaint in *Atrium*, similar to the Complaint here, alleged that the defendant hospital system had entered into agreements with health insurers that contained "steering" restrictions that limited the insurers' "ability to inform their customers about, or incentivize them to use, other health-service providers which may be able to provide better or more affordable service." *Atrium*, 248 F. Supp. 3d at 723. The complaint in *Atrium*, like the Complaint here, alleged that "'[i]ndividuals and employers in the Charlotte area pay higher prices for health insurance coverage, have fewer insurance plans from which to choose, and are denied access to consumer comparison shopping and other cost-saving innovative and more efficient health plans that would be possible if insurers could steer freely.'" *Atrium,* 248 F. Supp. 3d at 729.

The *Atrium* court held that "these allegations are specifically the type of allegation that states a direct anticompetitive effect and a plausible claim for relief under Section 1 of the Sherman Act." *Id*. Such allegations "are not legal conclusions baldly and only stating that [the defendant's] steering restrict[ions] unreasonably restrain trade, nor are they allegations of theoretical harm stating that [the defendant's] actions 'could,' 'might,' or 'potentially' cause actual harm." *Id.* Accordingly, the court concluded that "[p]laintiffs have alleged direct evidence of market harm with enough specificity that their claim for a violation of 15 U.S.C. § 1 is plausible" and that "[r]esolution of these fact-intensive inquiries requires discovery, and perhaps

ultimate decision by a fact-finder." *Atrium,* 248 F. Supp. 3d at 730. The same is true here, and OhioHealth's motion fails.

c. The Complaint Alleges Indirect Evidence of Anticompetitive Effects Sufficient to Carry Plaintiffs' Burden.

In addition to direct evidence, the Complaint alleges indirect evidence of anticompetitive effects, that is, proof of "market power plus 'some other ground for believing that the challenged behavior could harm competition in the market,'" *Atrium*, 248 F. Supp. 3d at 728 (quoting *Ind. Fed'n of Dentists*, 476 U.S. at 460). These allegations of indirect evidence provide an independent basis to deny OhioHealth's motion. Plaintiffs have the flexibility to show market power either directly or indirectly. *See Conwood Co., L.P. v. U.S. Tobacco Co.*, 290 F.3d 768, 783 n.2 (6th Cir. 2002) ("Whether a company has monopoly or market power 'may be proven directly by evidence of the control of prices or the exclusion of competition, or it may be inferred from one firm's large percentage share of the relevant market.'") (quoting *Tops Markets, Inc. v. Quality Markets, Inc*., 142 F.3d 90, 97-98 (2d Cir. 1998)). Plaintiffs have alleged sufficient facts under both methods.

First, the Complaint plausibly alleges direct evidence of market power based on OhioHealth's indispensability: "Because of OhioHealth's size and the many hospitals it controls, a payor selling health insurance plans to individuals and employers in the Columbus MSA and in Central Columbus must have OhioHealth as a participant in at least some of its provider networks to have viable health insurance products." Complaint at ¶ 50, ECF No. 1 at PageID 18. It also pleads that OhioHealth "derives market power from its control of hospitals outside of the Columbus MSA, some of which are the only hospitals in their counties," and that "[p]ayors need those hospitals in their provider networks." *Id.*

These market realities confer bargaining power onto OhioHealth, heavily influencing the outcome of OhioHealth's negotiations with health insurers. OhioHealth exercises its power to demand higher prices in these negotiations. Complaint at ¶¶ 9, 49-50, ECF No. 1 at PageID 4, 17-18. OhioHealth also exercises its power to demand the anticompetitive contractual restrictions that are at issue in this case. Complaint at ¶ 50, ECF No. 1 at PageID 18. Health insurers have tried to reject these restrictions, but OhioHealth has summarily refused, relying on the fact that health insurers need to include OhioHealth's facilities in at least some of their provider networks to have viable health insurance products. Complaint at ¶¶ 50-51, ECF No. 1 at PageID 18-19. Thus, the existence of OhioHealth's high prices and contractual restrictions provide further direct evidence of market power.[13]

Second, the Complaint plausibly alleges indirect evidence of market power because OhioHealth possesses a large share of the relevant markets and this share is protected by significant barriers to entry. Specifically, OhioHealth's share of inpatient GAC discharges and its share of inpatient GAC hospital beds were both more than 35% in each relevant market in 2023. Complaint at ¶ 49, ECF No. 1 at PageID 17-18. OhioHealth and two other hospital systems alone control more than 85% of inpatient GAC discharges. Complaint at ¶ 48, ECF No. 1 at PageID 17.[14] As to entry barriers, the Complaint alleges that "building a hospital with a strong reputation

[13] *See Promedica Health System, Inc. v. FTC*, 749 F.3d 559, 562 (6th Cir. 2014) ("[T]o the extent patients view a hospital's services as desirable or even essential—say, because of the hospital's location or its reputation for quality—the hospital's bargaining power increases. . . . If a provider becomes so dominant in a particular market that no [health insurer] can walk away from it and remain competitive, [] then that provider can demand—and more to the point receive—monopoly rates (*i.e.*, prices significantly higher than what the [health insurers] would pay in a competitive market)."); *see also Atrium*, 248 F. Supp. 3d at 728 ("Market power is defined as 'the power to force a purchaser to do something that he would not do in a competitive market.'") (quoting *Eastman Kodak Co. v. Image Technical Services, Inc., et al.*504 U.S. 451, 464 (1992)).

[14] Contrary to OhioHealth's claim, these allegations do not "suggest roughly equal market shares with no dominant firm or market power." Motion to Dismiss, ECF No. 18 at PageID 122. The Complaint specifically alleges that OhioHealth possesses market power in the alleged relevant markets. Complaint at ¶¶ 48-56, ECF No. 1 at PageID 17-20.

that can attract physicians and patients is difficult, time-consuming, and expensive" and that OhioHealth's contractual restrictions raise these barriers even higher. Complaint at ¶ 56, ECF No. 1 at PageID 20.

In Section 1 cases, courts reject attempts to establish cutoffs for the level of market share required to demonstrate market power. *See, e.g.*, *United States v. Am. Express Co.*, 88 F. Supp. 3d 143, 188-91 & n.23 (E.D.N.Y. 2015) (rejecting American Express's proposed 30% cutoff as an "unduly formalistic and arbitrary approach" and finding that its "26.4% share of a highly concentrated market with significant barriers to entry suggests that the firm possesses market power"), *rev'd on other grounds*, 838 F.3d 179 (2d Cir. 2016), *aff'd sub nom.*, *Ohio v. Am. Express Co.* 585 U.S. 529 (2018). Indeed, courts routinely find that firms with market shares around or below those of OhioHealth possess market power. *See, e.g.*, *United States v. Visa USA, Inc.*, 344 F.3d 229, 240 (2d Cir. 2003) (sustaining district court finding that MasterCard exercised market power with approximately 26% of the market); *Toys "R" Us, Inc. v. FTC*, 221 F. 3d 928, 930, 937 (7th Cir. 2000) (sustaining FTC finding that the firm exercised market power with 20% of the national market and between 35% and 49% in various local markets); *Rebel Oil Co., Inc. v. A. Richfield Co.*, 51 F.3d 1421, 1438 (9th Cir. 1995) ("ARCO's market share of 44 percent is sufficient as a matter of law to support a finding of market power, if entry barriers are high and competitors are unable to expand their output in response to supracompetitive pricing."); *United States v. Blue Cross Blue Shield of Mich.*, 809 F. Supp. 2d 665 (E.D. Mich. 2011) (denying motion to dismiss where the defendant's alleged shares in some local health insurance markets were 40%).

OhioHealth asserts these allegations fail because "[c]ourts consistently reject claims of market power based on market shares below 50%." Motion to Dismiss, ECF No. 18 at PageID

122. OhioHealth cites three cases for this proposition, none of which are on point. OhioHealth misleadingly cites on *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 424 (2d Cir. 1945) ("*Alcoa*"), which is irrelevant because it was a Section 2 case in which the court described the standard for *monopoly power*, not a Section 1 case regarding the standard for *market power*. *See id.* (discussing whether Alcoa's market share was "enough to constitute a monopoly"). OhioHealth also cites the statement in *Jefferson Par. Hosp. Dist. No. 2 v. Hyde*, that a defendant's "market share *alone* was insufficient as a basis to infer market power." 466 U.S. 2, 27 (1984) (emphasis added). But here, Plaintiffs have alleged far more than market share to demonstrate OhioHealth's market power. And in the third case Defendant cites, *Times-Picayune Pub. Co. v. United States*, the Court emphasized looking beyond market shares alone when conducting a market power assessment. 345 U.S. 594, 612 (1953) (explaining that "no magic inheres in numbers" and "the relative effect of percentage command of a market varies with the setting in which that factor is placed").

For all these reasons, the Complaint plausibly alleges that OhioHealth possesses market power. As to the requirement that Plaintiffs couple market power evidence with "some other ground for believing that the challenged behavior could harm competition in the market," *Atrium* at 728, the Complaint easily satisfies this requirement with the same allegations used to plead direct evidence of anticompetitive effects. *See Realcomp II,* 635 F.3d at 825 (stating plaintiff's burden is met if the defendant "is shown to have market power and to have adopted policies *likely* to have an anticompetitive effect") (emphasis in original); *Addamax Corp. v. Open Software Found., Inc.*, 152 F.3d 48, 53 (1st Cir. 1998) ("a sufficiently high *risk* of an anticompetitive effect" meets plaintiff's burden) (emphasis in original). This includes allegations that OhioHealth's contractual restrictions insulate OhioHealth from competition, impede the

ability of rivals and prospective entrants to compete for patient volume on price and quality, and result in higher prices, lower quality, and fewer choices for patients and employers. *See supra* Section II.B.[15]

V. OHIOHEALTH'S ARGUMENTS BASED ON IRRELEVANT DOCTRINES FAIL TO SHOW THAT THE COMPLAINT IS INADEQUATELY PLED.

Courts analyze vertical restraints like those at issue in this case under the rule of reason standard. *See Amex*, 585 U.S. at 541. "[L]ike nearly every other vertical restraint, the antisteering provisions should be assessed under the rule of reason." *Id.* (citing *Leegin Creative Leather Prod., Inc. v. PSKS, Inc.*, 551 U.S. 877, 882 (2007); *State Oil Co. v. Khan*, 522 U.S. 3, 19 (1997); *Business Elec. Corp. v. Sharp Elec. Corp.*, 485 U.S. 717, 726 (1988); *Cont'l T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 57 (1977)). OhioHealth makes several attempts to muddy this standard by using irrelevant doctrines based on completely different bodies of antitrust law, none of which show an inadequacy in Plaintiffs' complaint.

A. The Alleged Conduct Is Not a Unilateral Refusal to Deal.

OhioHealth erroneously claims that "vertical contracts between sophisticated buyers and sellers are presumptively reasonable." Motion to Dismiss, ECF No. 18, § IV.B (heading), PageID 111. OhioHealth cites no law that supports such a standard. Instead, OhioHealth attempts to support this claim by suggesting that the Court should treat the alleged unlawful conduct—entering into anticompetitive contracts with insurance companies—as a unilateral refusal to deal.

[15] While not required to meet Plaintiffs' initial burden, the Complaint also alleges that "OhioHealth's restrictions on budget-conscious plans do not have any procompetitive effects" and that "[a]ny arguable benefits of OhioHealth's contractual restrictions are outweighed by their actual and likely anticompetitive effects and/or could be achieved through less restrictive means." Complaint at ¶ 55, ECF No. 1 at PageID 19-20. To the extent OhioHealth's brief can be read to suggest it is making procompetitive arguments, they should be disregarded at the motion to dismiss stage. *See Brennan v. Concord EFS, Inc.*, 369 F. Supp. 2d 1127, 1133 (N.D. Cal. 2005) ("Whatever the merits of [the defendant's procompetitive] arguments, they are intrinsically factual, contrary to plaintiffs' pleading and inappropriate for resolution at the motion to dismiss stage.").

In doing so, OhioHealth misapplies the Supreme Court's decision in *Colgate*. Motion to Dismiss, ECF No. 18 at PageID 111-12 (citing *United States v. Colgate & Co.*, 250 U.S. 300 (1919)). *Colgate* is inapposite because Plaintiffs do not allege that OhioHealth has refused to deal with anyone.

In *Colgate*, the Supreme Court held that a firm's unilateral refusal to deal with certain distributors did not violate the Sherman Act. *See Colgate*, 250 U.S. at 307-08. There, the key feature was that the defendant had not entered into *agreements* with distributors that contained anticompetitive terms but rather had made a *unilateral* decision not to deal with the distributors. *Id.*; *see also Monsanto Co. v. Spray-Rite Service Corp.*, 465 US 752, 761 (1984) (explaining *Colgate*'s holding that a manufacturer "has a right to deal, or refuse to deal, with whomever it likes, as long as it does so *independently*") (emphasis added). Here, by contrast, OhioHealth has entered into agreements with insurance companies that contain provisions that reduce competition in the relevant markets. Accordingly, *Colgate* is readily distinguishable.[16]

Similarly, OhioHealth is wrong to claim that its conduct is "*per se* legal" based on the Sixth Circuit's opinion in *Care Heating*. Motion to Dismiss, ECF No. 18 at PageID 112 (citing *Care Heating & Cooling, Inc. v. Am. Standard, Inc.,* 427 F.3d 1008, 1013 (6th Cir. 2005)). While the *Care Heating* court recognized the right to unilaterally refuse to deal with the plaintiff, it also held that "the rule of reason must be applied" when analyzing an allegedly unlawful agreement between the defendant and the plaintiff's competitor. *Care Heating*, 427 F.3d at 1013-1014 (applying the rule of reason).[17]

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[16] In a footnote, OhioHealth recycles a prior argument to claim that its conduct is "subject to the *Colgate* safe harbor" because the Complaint does not identify the details of the individual contract provisions at issue. Motion to Dismiss, ECF No. 18 at PageID 112 n.3. This argument fails for the reasons discussed in Section IV.B.1 above. The Complaint alleges the existence of anticompetitive agreements, not a violation arising from unilateral conduct.

[17] OhioHealth's citations to *Expert Masonry* and *Concord Boat* fare no better. In each of those cases, the courts held that the rule of reason applied to the conduct at issue. *Expert Masonry, Inc. v. Boone Cnty., Ky.*, 440 F.3d 336, 345

By suggesting that a right to enter into anticompetitive *agreements* is necessary to promote the operation of the "free market," OhioHealth gets the law backwards. Motion to Dismiss, ECF No. 18 at PageID 111-12. The Supreme Court has explained that the antitrust laws—including the framework established by Section 1—are "a central *safeguard* for the Nation's free market structures" and "declare a considered and decisive prohibition by the Federal Government of . . . practices that *undermine* the free market," such as those at issue here. *N.C. State Bd. of Dental Exam'rs v. FTC*, 574 U.S. 494, 502 (2015) (emphasis added). OhioHealth's attempt to expand the unilateral refusal to deal doctrine to immunize its anticompetitive agreements fails to save its Motion to Dismiss.

B. Exclusive Dealing Caselaw Does Not Support Dismissal.

OhioHealth also erroneously claims that two "exclusive dealing" cases from the Seventh Circuit support dismissal. As with the *Colgate* argument, this argument entirely mischaracterizes Plaintiffs' Complaint, which does not allege unlawful exclusive dealing.

First, OhioHealth cites *Paddock Publications, Inc. v. Chicago Tribune Co.*, 103 F.3d 42, 45 (7th Cir. 1996), in support of an argument that "competition for the contract" warrants dismissal. Motion to Dismiss, ECF No. 18 at PageID 113. While the *Paddock* court did consider competition for the contract as a possible argument that exclusive deals are reasonable, this is not an exclusive dealing case. OhioHealth cites no authority suggesting that this applies here or that it provides a silver bullet against Section 1 liability.

OhioHealth posits without support that the agreements at issue here were subject to "competing offers from other hospitals." Motion to Dismiss, ECF No. 18 at PageID 114. But this attempt to insert additional facts into the complaint is inappropriate in the context of a motion to

(6th Cir. 2006) ("[W]e must review the alleged acts under the rule of reason."); *Concord Boat Corp. v. Brunswick Corp.*, 207 F.3d 1039, 1058 (8th Cir. 2000) ("[W]e apply the rule of reason.").

dismiss. And even if it were true that the agreements were subject to competing offers, this would say nothing about the agreements' terms and their effects. At most, OhioHealth's assertion of competing offers raises an issue for discovery and consideration in the Court's rule of reason analysis. *See United States v. Google*, 687 F. Supp. 3d 48, 73-74 (D.D.C. 2023) (holding that Google's "competition for the contract" defense could not be resolved on summary judgment and was better left for the court's analysis of procompetitive justifications after trial).

Second, OhioHealth cites *Methodist Health Servs. Corp. v. OSF Healthcare Sys.*, 859 F.3d 408 (7th Cir. 2017), for the proposition that "contracts entirely excluding other hospitals from some insurance plans do not violate Section 1." Motion to Dismiss, ECF No. 18 at PageID 113-114. "*[I]pso facto*," OhioHealth claims, "contracts that only sometimes require that OhioHealth be included in an insurance plan and 'featured at the most favored level of benefits' cannot constitute a Section 1 violation." *Id.* (quoting Complaint at ¶ 31, ECF No. 1 at PageID 10). But *Methodist* does not stand for such a sweeping premise. In that case, the district court *denied* the defendant's motion for judgment on the pleadings and allowed discovery to proceed, which would be appropriate in this case as well.[18] On summary judgment, the district court applied the rule of reason and ruled for the defendant only after conducting a detailed analysis of the relevant markets and the effects of the challenged agreements.[19] Far from supporting

[18] *Methodist Health Servs. Corp. v. OSF Healthcare Sys.*, No. 1:13-cv-01054-SLD-JEH, 2015 U.S. Dist. LEXIS 37887, at *1 (C.D. Ill. Mar. 25, 2015).

[19] *Methodist Health Servs. Corp. v. OSF Healthcare Sys.*, No. 1:13-cv-01054-SLD-JEH, 2016 U.S. Dist. LEXIS 136478, at *22-46 (C.D. Ill. Sep. 30, 2016), *aff'd*, 859 F.3d 408 (7th Cir. 2017). On appeal, the Seventh Circuit did not issue a blanket ruling that "contracts entirely excluding other hospitals from some insurance plans do not violate Section 1" as OhioHealth's brief claims. Motion to Dismiss, ECF No. 18 at PageID 113-114. Rather, the court explained that "some exclusive-dealing arrangements run afoul of the Sherman Act" and that a different set of exclusive contracts between the hospital and insurance companies might have led to a different result. *Methodist*, 859 F.3d at 410. But unlike here, the facts in *Methodist* suggested, after the benefit of discovery, that the effects of the specific contracts at issue in that case had been "slight," and the plaintiff did not have "any theory" as to how those contracts "could have caused prices to rise." *Id.* at 411. Thus, the court affirmed the order granting summary judgment.

dismissal, that posture highlights the importance of conducting discovery and a fact-specific analysis to determine the effects of OhioHealth's agreements under the rule of reason.

C. Plaintiffs Have Not Alleged an Essential Facilities Claim.

In another attempt to muddy the applicable law, OhioHealth mischaracterizes Plaintiffs' claims as based on an "essential facilities" theory. Motion to Dismiss, ECF No. 18 at PageID 115-116. Such a theory involves an alleged violation of Section 2 of the Sherman Act, which prohibits monopolization, when a monopolist that denies its competitors access to an input that is essential to competition. *See, e.g.*, *Aerotec Int'l v. Honeywell Int'l*, 836 F. 3d 1171, 1184-85 (9th Cir. 2016). Plaintiffs have not alleged a violation of Section 2, do not seek to force OhioHealth to "shar[e]" its "infrastructure" with competing hospitals, and do not rely on this inapposite doctrine. *See* Motion to Dismiss, ECF No. 18 at PageID 115-16.

D. OhioHealth's Burden Claims Do Not Warrant Dismissal.

OhioHealth suggests that the competitive harm arising from "one system's contracts" do not justify this "massive antitrust case." Motion to Dismiss, ECF No. 18 at PageID 110. But courts analyzing antitrust claims apply the relevant federal pleading standards. *See Twombly*, 550 U.S. at 555; *see also City of Pontiac Police & Fire Ret. System*, 92 F.4th at 390-91. The Complaint clearly meets these standards for the reasons discussed above.

Anticompetitive acts, even when championed by just one organization—especially one like OhioHealth, which has the power to harm competition for healthcare across the Columbus area—are still anticompetitive. OhioHealth's conduct impacts the pocketbooks of patients and employers across this area and is not beyond the reach of the antitrust laws.

E. Federal Courts Have Repeatedly Upheld Sherman Act Claims in Prior Cases Regarding Similar Hospital Contract Restrictions.

It is well-established that restrictions such as those at issue in this case may give rise to liability under Section 1 of the Sherman Act. At bottom, much of OhioHealth's motion is based

on arguments that courts have correctly rejected in other cases regarding hospital contract restrictions nearly identical to those at issue here.

In 2016, the United States, joined by the State of North Carolina, brought the *Atrium* case—a Section 1 action against the Carolinas Healthcare System, now called Atrium Health. The plaintiffs alleged that Atrium's agreements with insurers "frequently if not always prohibit certain behaviors," including "steering" and "shar[ing] comparative cost and quality information with consumers." *Atrium*, 248 F. Supp. 3d at 724. The court denied Atrium's motion for judgment on the pleadings, concluding that "determining whether a restraint on trade is unreasonable is a fact-intensive inquiry" and that resolution "requires discovery, and perhaps ultimate decision by a fact-finder." *Id.* at 729-30. Based on allegations similar to those at issue here, the court found that plaintiffs had sufficiently alleged the elements of a Section 1 claim, including by alleging both direct and indirect evidence of anticompetitive effects. *Id.* at 730-33.

In 2022, a coalition of local governments in North Carolina filed suit against HCA Healthcare, a large hospital system, alleging that it violated Sections 1 and 2 of the Sherman Act by, among other things, adopting "anti-steering" and "anti-tiering" provisions, as well as "gag clauses." *HCA*, 2024 WL 759308, at *4. The defendant moved to dismiss, arguing: (1) that the plaintiffs had "failed to allege specific anticompetitive contract provisions," (2) that the plaintiffs had "failed to allege that the [d]efendants' conduct harmed competition in the Relevant Market," and (3) the complaint "should be dismissed because the allegedly anticompetitive contract provisions also have procompetitive effects." *Id.* at *9-10. The court rejected each of these arguments and denied the motion. *Id.*

In *Sidibe v. Sutter Health*, a class of consumers brought a Section 1 action against Sutter Health, a large hospital system in California, alleging among other things that Sutter forced

health plans to accept "anti-steering clauses," which "caus[ed] plaintiffs to pay higher health insurance premiums and other healthcare charges." *Sutter*, 667 F. App'x at 642. The Ninth Circuit reversed the district court's decision to grant Sutter Health's motion to dismiss, reinstating the complaint and allowing the claims to proceed. *Id.* at 643.[20]

VI. THE COMPLAINT PLAUSIBLY STATES THE ELEMENTS OF PLAINTIFF STATE OF OHIO'S VALENTINE ACT CLAIM.

As OhioHealth correctly acknowledges, courts applying the Valentine Act have followed the federal courts' interpretation of the Sherman Act. Motion to Dismiss, ECF No. 18 at PageID 127 (citing *Johnson v. Microsoft Corp.*, 2005-Ohio-4985, ¶ 8, 834 N.E.2d 791, 795 (Ohio 2005)). Where, as here, a complaint states a claim under Section 1 of the Sherman Act, it states a claim under the Valentine Act standing on the same allegations. *See, e.g.*, *Sunless, Inc. v. Palm Beach Tan, Inc.,* 2022 U.S. Dist. LEXIS 254858, at *18 (N.D. Ohio 2022) ("[B]ecause Defendant has plausibly alleged [in a counterclaim] an antitrust violation under the Sherman Act, the court also finds that it has met its burden of pleading a violation of the Valentine Act."). Because Plaintiffs have alleged facts sufficient to satisfy each element of Plaintiff United States's Section 1 claim, Plaintiff State of Ohio has also alleged facts sufficient to plausibly state a claim under the Valentine Act.

VII. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court deny OhioHealth's Motion to Dismiss.

[20] In *Medical Center at Elizabeth Place, LLC v. Premier Health Partners*, the dismissal of claims involving contracts between hospitals and health insurers turned on plaintiff's choice to exclusively plead *per se* violations. No. 3:12-CV-26, 2017 WL 3433131, at *14-17, *20 (S.D. Ohio Aug. 9, 2017). The court explained that the rule of reason should instead apply to the plaintiff's claims and that a finding on the competitive effects of the contractual restrictions "must be made only after considering all relevant factors under a full rule of reason analysis." *Id.* at *16-17. Thus, although its facts are distinguishable, this decision also supports denying OhioHealth's motion.

Dated: May 29, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Memorandum in Opposition was served on counsel for all parties on May 29, 2026 via the Court's CM/ECF system.

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