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S.M. Oliva.

### Public Comments of Citizens for Voluntary Trade to the Proposed Final Judgment

Before: Judge Graham C. Mullen

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. (b)-(h), and the notice filed by the United States in the January 10, 2003, edition of the **Federal Register**, Citizens for Voluntary Trade respectfully submits the enclosed public comments in response to the proposed Final Judgment in the above-captioned case.

Filed: March 7, 2003.

S.M. Oliva,  
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### Resolution

The Board of Directors of Citizens for Voluntary Trade,

Considering the fundamental role of judicial review in protecting the rights of Americans from the abuse of government power,

Recognizing the ever-increasing impact of antitrust law on the ability of

Americans to maintain a capitalist system based on the principle of voluntary trade for mutual benefit,

Noting that the principles of capitalism are inconsistent with the enforcement of the antitrust laws,

Affirming that antitrust law is not the proper means of promoting honest competition and free trade among individuals and businesses,

Recalling the numerous abuses of federal antitrust authorities in applying the antitrust laws unjustly to the collective bargaining actions of physicians and health care providers,

Believing that the case currently pending against Mountain Health Care is baseless as a matter of fact, law, and justice,

Convinced that the only means to protect the rights of Mountain Health Care, and of Americans generally, is for immediate judicial action,

1. Directs the president of Citizens for Voluntary Trade to file timely and substantial comments with the United States opposing entry of the proposed Final Judgment against Mountain Health Care;

2. Appeals to the United States District Court for the Western District of North Carolina to reject entry of the proposed Final Judgment;

3. Urges the United States Department of Justice to dismiss its complaint against Mountain Health Care; and

4. Calls upon the United States Government to rescind its Statements of Antitrust Enforcement Policy in Health Care with all deliberate speed.

### Introduction

On December 13, 2002, following a two-year investigation, the United States Department of Justice (DOJ) sued Mountain Health Care, P.A. (Mountain), a North Carolina corporation operating as a preferred-provider organization under state law. Mountain is a network of more than 1,800 health care providers, approximately 400 of whom are physician shareholders. Mountain sells access to its network to managed care purchasers and other insurers throughout the greater Asheville, North Carolina area, and generally in western North Carolina.

The DOJ alleged Mountain violated the Sherman Act by maintaining a fee schedule that effectively fixed prices for network services. Rather than contest the government's charges in court, Mountain agreed to surrender without a fight, and acquiesce in the government's demand for Mountain's immediate dissolution. A proposed Final Judgment directing this dissolution was submitted by the DOJ and Mountain to the United States District Court for the Western

District of North Carolina on the same day as the government's complaint was filed.<sup>1</sup>

On January 10, 2003, pursuant to the federal Tunney Act, 15 U.S.C. 16, the United States published the proposed Final Judgment, along with a required Competitive Impact Statement (CIS) in the **Federal Register**, thereby commencing a 60-day comment period. Citizen for Voluntary Trade (CVT) henceforth submits the following comments in response to the proposed Final Judgment.

CVT is a national nonprofit association based in Washington, DC. CVT is organized to promote the public welfare by examining the enforcement and antitrust and competition laws against private businesses and individuals. CVT's standing policy is to file comments in all proceedings where the United States seeks to violate the individual rights of businesses through unjust and unfounded antitrust prosecutions.<sup>2</sup> This case presents just such a situation, where an innocent business in the form of Mountain Health Care is being punished despite the fact they committed no crime against the public interest. For the reasons stated below, CVT opposes entry of the proposed Final Judgment and respectfully requests the government withdraw its complaint against Mountain.

For the record, Citizens for Voluntary Trade does not have a financial interest in the outcome of this case, nor do we have any financial interest in any competitor of Mountain Health Care. These comments reflect the view of the Board of Directors of Citizens for Voluntary Trade.

### Part I: Analysis of the Complaint

#### A. Mountain and the "Uniform Fee Schedule"

We begin our comments by examining the government's complaint against Mountain. The DOJ's central claim is that Mountain "organized and directed an effort to develop a uniform fee schedule" which Mountain allegedly used in negotiations with managed care companies and other third-party

<sup>1</sup> The case was initially assigned to Judge Lacy Thornburg, who recused himself on February 20, 2003, and the case was subsequently reassigned to Chief Judge Graham C. Mullen on February 25.

<sup>2</sup> S.M. Oliva, the present of Citizens of Voluntary Trade, filed a brief as *amicus curiae* with the Court on February 15, 2003, seeking the release of additional information from the United States on the allegations contained in the complaint. At the time of the filing, the Court has not yet ruled on Oliva's motion to file the brief or on the brief's substantive requests. A copy of the brief is included in the appendix to these comments.