

**UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES**

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<b>In the Matter of</b>	)	
	)	
	)	
<b>Cabell Huntington Hospital, Inc.</b>	)	<b>Docket No. 9366</b>
<b>a corporation;</b>	)	
	)	
<b>Pallottine Health Services, Inc.</b>	)	
<b>a corporation;</b>	)	
	)	
<b>and</b>	)	
	)	
<b>St. Mary's Medical Center, Inc.</b>	)	
<b>a corporation.</b>	)	

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**COMPLAINT COUNSEL'S UNOPPOSED MOTION FOR ISSUANCE OF A  
SUBPOENA AD TESIFICANDUM TO CONGRESSMAN EVAN JENKINS  
UNDER RULE OF PRACTICE 3.36**

**INTRODUCTION**

As per this Court's Order of January 5, 2016, granting the parties permission to seek to take discovery from nonparty Congressman Evan Jenkins after the close of fact discovery, Complaint Counsel brings this motion pursuant to Federal Trade Commission ("Commission") Rule of Practice 3.36, 16 C.F.R. § 3.36, for the issuance of a Subpoena *Ad Testificandum* to Congressman Jenkins, an elected official representing West Virginia's Third District. Respondents do not oppose Complaint Counsel's request for the issuance of a subpoena but take no position on the contents of this motion. Because the material sought meets the requirements set out in Rule 3.36, we respectfully ask that the Motion be granted and that the subpoena be issued as requested. An unsigned Subpoena *Ad*

## ARGUMENT

Rule 3.36(b) of the Commission's Rules of Practice requires the party seeking issuance of a subpoena for the appearance of an official or employee of a governmental agency to make a specific showing regarding the requested subpoena. With respect to a subpoena *ad testificandum* to be served within the United States, the party must show that:

- (1) the information sought from the official or employee of the governmental agency is reasonable in scope;
- (2) for discovery, the appearance of the official or employee of the governmental agency falls within the limits of discovery under Rule 3.31(c)(1); and
- (3) for discovery, the information sought from the official or employee of the governmental agency cannot reasonably be obtained by other means.

The proposed Subpoena *Ad Testificandum* to Congressman Jenkins meets all requirements of Rule 3.36(b). Movant Complaint Counsel is sensitive to the responsibilities of, and potential burden upon, Congressman Jenkins. Because Respondents have placed Congressman Jenkins on their Final Proposed Witness List (which was served on March 7, 2016), however, Complaint Counsel is c.2(pla)- Tc -0.0009 Tw 1te0 1(v4s have plalebthe p03 Tw monyon s)-4n

topics, which is reasonable in scope relative to the Respondents' naming of Congressman Jenkins as a witness in this matter.

*The testimony sought is relevant to Complaint Counsel's allegations in the Complaint and Respondents' defenses.* As Respondents have named Congressman Jenkins as a proposed witness expected to testify about Respondents' defenses, the testimony sought from Congressman Jenkins falls within the limits of discovery under Rule 3.31(c)(1), which requires that discovery be "reasonably expected to yield information relevant to the allegations of the complaint . . . or to the defenses of any respondent."

*The testimony cannot be reasonably obtained by other means.* As Respondents have named Congressman Jenkins as a proposed witness expected to testify about Respondents' defenses, the testimony sought from Congressman Jenkins cannot be reasonably obtained by other means.

### **CONCLUSION**

This Court has recognized that issuance of a subpoena to a governmental agency is appropriate if the moving party meets the criteria under Rule 3.36. *In the Matter of Intel Corporation*, FTC Docket No. 9341 (Order dated Jun. 9, 2010), available at <https://www.ftc.gov/sites/default/files/documents/cases/2010/06/100609intelorder.pdf>. For the reasons stated above, therefore, Complaint Counsel respectfully requests that the Court grant the Motion and issue the subpoena to Congressman Jenkins.

Respectfully submitted,

Dated: March 10, 2016

/s/ Alexis J. Gilman  
Alexis J. Gilman

Tara Reinhart  
Mark D. Seidman  
Michelle M. Yost  
Elizabeth C. Arens  
Jeanine Balbach  
Thomas H. Brock  
Stephanie R. Cummings  
Melissa Davenport  
Svetlana S. Gans  
Elisa Kantor  
David Laing  
Matthew McDonald  
Jeanne Nichols  
Michael Perry  
Amy Posner  
Samuel I. Sheinberg

Complaint Counsel  
600 Pennsylvania Avenue, NW  
Washington, DC 20580  
Telephone: (202) 326-2579  
Facsimile: (202) 326-2655



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	)	
<b>and</b>	)	
	)	
<b>St. Mary's Medical Center, Inc.</b>	)	
<b>a corporation.</b>	)	

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**[PROPOSED] ORDER GRANTING COMPLAINT COUNSEL'S MOTION FOR  
ISSUANCE OF SUBPOENA AD TESTIFICANDUM  
TO CONGRESSMAN EVAN JENKINS**

On March 10, 2016, pursuant to Rule 3.36 of the Federal Trade Commission's Rules of Practice, Federal Trade Commission Complaint Counsel filed a motion for an order authorizing the Secretary of the Commission to issue a Subpoena *Ad Testificandum* to Congressman Evan Jenkins, an elected official representing West Virginia's Third District, and thus a government official as described in Rule 3.36(a).

Rule 3.36(b) requires the party seeking issuance of a subpoena requiring the appearance of an official or employee of another government agency to make a showing that: the material sought is reasonable in scope; the material is within the limits of discovery under Rule 3.31(c)(1); and the information or material sought cannot reasonably be obtained by other means. Complaint Counsel represents that Respondents do not oppose the

Additionally, on January 5, 2016, this Court granted the parties permission to seek to take discovery, pursuant to Rules 3.34 and 3.36, from nonparty Congressman Evan Jenkins after the close of fact discovery and no later than seven days after th

# EXHIBIT A



# SUBPOENA AD TESTIFICANDUM DEPOSITION

Provided by the Secretary of the Federal Trade Commission, and  
Issued Pursuant to Rule 3.34(a), 16 C.F.R. § 3.34(a) (2010)

1. TO

2. FROM

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION

This subpoena requires you to appear and give testimony at the taking of a deposition, at the date and time specified in Item 5, and at the request of Counsel listed in Item 8, in the proceeding described in Item 6.

3. PLACE OF DEPOSITION

4. YOUR APPEARANCE WILL BE BEFORE

5. DATE AND TIME OF DEPOSITION

7. ADMINISTRATIVE LAW JUDGE

8. COUNSEL AND PARTY ISSUING SUBPOENA

DATE SIGNED

SIGNATURE OF COUNSEL ISSUING SUBPOENA

GENERAL INSTRUCTIONS

APPEARANCE

## MOTION TO LIMIT OR QUASH

The Commission's Rules of Practice require that any motion to limit or quash this subpoena must comply with Commission Rule 3.34(c), 16 C.F.R. § 3.34(c), and in particular must be filed within the earlier of 10 days after service or the time for compliance. The original and ten copies of the petition must be filed

### RETURN OF SERVICE

I hereby certify that a duplicate original of the within subpoena was duly served: (check the method used)

- in person.
- by registered mail.
- by leaving co/i1 1 1 SCNtrn.Cr3rn.Cr34CmM

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on the person named herein on:

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(Month, day, and year)

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(Name of person making service)

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(Official title)

CERTIFICATE OF SERVICE

I hereby certify that on March [x], 2016, I served via FedEx and electronic mail delivery a copy of the attached Subpoena and Testificandum to Congressman Evan Jenkins, a copy of the Administrative Law Judge's order authorizing the subpoena, and a copy of the Protective Order governing this matter to:

Congressman Evan Jenkins  
c/o Eleni M. Roumel, Esq.  
Assistant Counsel  
Office of General Counsel  
U.S. House of Representatives  
219 Cannon House Office Building  
Washington, DC 20515-3902  
Eleni.Roumel@mail.house.gov

I further certify that I served the foregoing on the following counsel via electronic mail:

Geoff Irwin  
Kenneth W. Field  
Jones Day  
51 Louisiana Avenue, N.W.  
Washington, DC 20001  
(202) 879-3963  
cabell\_service@jonesday.com  
Counsel for Respondent Cabell  
Huntington Hospital, Inc.

James Bailes  
Thomas Craig  
Bailes, Craig & Yon, PLLC  
401 10th Street, Suite 500  
Huntington, WV 25701  
(304) 697-4700  
tlc@bcyon.com  
jrb@bcyon.com  
Counsel for Respondent Cabell  
Huntington Hospital, Inc.

David Simon  
H. Holden Brooks  
Foley & Lardner LLP  
3000 K Street, N.W., Suite 600  
Washington, DC 20007  
(202) 945-6033  
MILW-SMMCSERVICE@foley.com  
Counsel for Respondent Fallottine  
Health Services, Inc. at St. Mary's  
Medical Center, Inc.

Dated: March [x], 2016

/s/ Jeanine Balbach  
Jeanine Balbach, Esq.  
On behalf of Complaint Counsel

**CERTIFICATE OF SERVICE**

I hereby certify that on March 10, 2016, I filed the foregoing Complaint Counsel's Motion for Subpoena *Ad Testificandum* to Congressman Evan Jenkins under Rule of Practice 3.36 electronically using the FTC's E-Filing System, which will send notification of such filing to:

Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

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

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

I further certify that I served, via electronic mail, the foregoing document on the following counsel:

Geoff Irwin  
Kenneth W. Field  
Jones Day  
51 Louisiana Avenue, N.W.  
Washington, DC 20001  
(202) 879-3963  
cabell\_service@jonesday.com  
*Counsel for Respondent Cabell Huntington Hospital, Inc.*

Thomas Craig  
James Bailes  
Bailes, Craig & Yon, PLLC  
401 10th Street, Suite 500  
Huntington, WV 25701  
(304) 697-4700  
tlc@bcyon.com  
jrb@bcyon.com  
*Counsel for Respondent Cabell Huntington Hospital, Inc.*

David Simon  
H. Holden Brooks  
Foley & Lardner LLP  
3000 K Street, N.W., Suite 600  
Washington, DC 20007  
(202) 945-6033  
MILW-SMMCSERVICE@foley.com  
*Counsel for Respondent Pallottine Health Services, Inc. and  
St. Mary's Medical Center, Inc.*

Eleni M. Roumel, Esq.  
Assistant Counsel  
Office of General Counsel  
U.S. House of Representatives  
219 Cannon House Office Building  
Washington, DC 20515-3902  
Eleni.Roumel@mail.house.gov  
*Counsel for Congressman Evan Jenkins*

Dated: March 10, 2016

/s/ Jeanine Balbach  
Jeanine Balbach, Esq.  
*On behalf of Complaint Counsel*

**CERTIFICATE FOR ELECTRONIC FILING**

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed document that is available for review by the parties and the adjudicator.

March 10, 2016

By: /s/ Jeanine Balbach