

# Healthcare Merger Aided in Second Request and Litigation by FTI Technology's Managed Review and Analytics



## **SITUATION: RESPOND TO A “SECOND REQUEST” ISSUED BY THE FEDERAL TRADE COMMISSION IN 60 DAYS, AND PREPARE FOR IMPENDING ANTITRUST LITIGATION.**

Two healthcare companies planned a merger and faced an antitrust ‘Second Request’ investigation. In addition, the companies anticipated that following compliance with the Second Request, the government would issue antitrust litigation against them. The companies faced two challenges – complying with the Second Request investigation, and preparing for the impending litigation.

When the actual “Second Request” was issued by the Federal Trade Commission (FTC), the company had just 60 days to respond. Both healthcare organizations wanted an e-discovery partner with experience handling complex Second Requests and other compliance-related investigations and litigation. In addition to the high-stakes pressure of a typical Second Request, this project required specific security and workflow designs to ensure that highly sensitive patient data remained secure and in compliance with the Health Insurance Portability and Accountability Act (HIPAA).

## **SOLUTION**

Because of FTI Technology's deep expertise in Second Requests, including the company's experience working on dozens of Second Requests over the past several years, both healthcare companies in the merger selected FTI Technology as their e-discovery partner. In addition to the Second Request expertise, the FTI team provided a deep bench of experienced analytic review lawyers to conduct research on the data for the post-Second Request litigation. This research

was implemented to assist counsel with finding key documents faster, better enabling the legal team to prepare deposition and white paper documents and effectively argue the matter. The team of researchers provided insight on both positive and negative information relating to the case, better arming counsel to present their arguments and anticipate data and arguments presented by the FTC at the time of deposition and trial. FTI's offering included:

**Collection:** The FTI team, in concert with the law firm attorneys, interviewed targeted custodians to identify relevant document repositories such as, group shares, custodian file shares, SharePoint sites, and other enterprise archives for collection in addition to preserving email. Such collaboration helped limit the number of documents collected from these sources and allowed FTI to document these decisions. While the number of documents in the initial collection was over 8 million, 80% of this data was email. After culling non-relevant and duplicate data, only half of the documents remained.

**Managed Review:** An experienced group of review attorneys, working with the Ringtail analytics and legal review software, utilized a set of workflows designed to keep data secure and in compliance with HIPAA regulations. This included a special review of responsive documents for privilege, personally identifiable information (PII) and further redacting of any healthcare information. In addition, the review team provided flexibility in that in order to meet a required production deadline, the team was able to staff up with lawyers experienced in identifying and redacting PII.

**Analytics and Predictive Coding:** Going beyond just keywords, the experienced managed review team used FTI Technology's advanced analytics and predictive coding to quickly find responsive data and key documents. The team was able to quickly group the documents into three buckets: those containing privilege terms, those containing PII and other healthcare information, and documents without privilege terms, PII or healthcare data. This grouping helped the team hone in on important data quickly and save significant time and money on review.

**Post-Production Deposition and Whitepaper Support:** In addition to producing the documents directly to the FTC, the managed review team used analytics to quickly find important documents for developing whitepapers and preparing for depositions.

**Expert Testimony:** The FTI team maintained chain of custody, complied with the healthcare industry requirements, and was able to provide expert witness testimony to the quality and defensibility of the entire e-discovery process.

## **IMPACT:**

### **ACHIEVED THE SECOND REQUEST PRODUCTION WITHIN BUDGET AND IN COMPLIANCE WITH HEALTHCARE INDUSTRY REQUIREMENTS.**

Through analytics research, the managed review team also helped counsel prepare for impending antitrust litigation. Despite several challenges, including changing thematic priorities, rolling collections, and shifting deposition timing, the Second Request data was safely produced to the FTC within the 60 day deadline. After starting with over 8 million documents, through culling, predictive coding, analytics and privilege review, the healthcare companies produced less than 700,000 documents in total. FTI's managed review team, through its expertise and analytics, helped in-house counsel and the law firm achieve substantive compliance as requested, on time, and within budget.

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